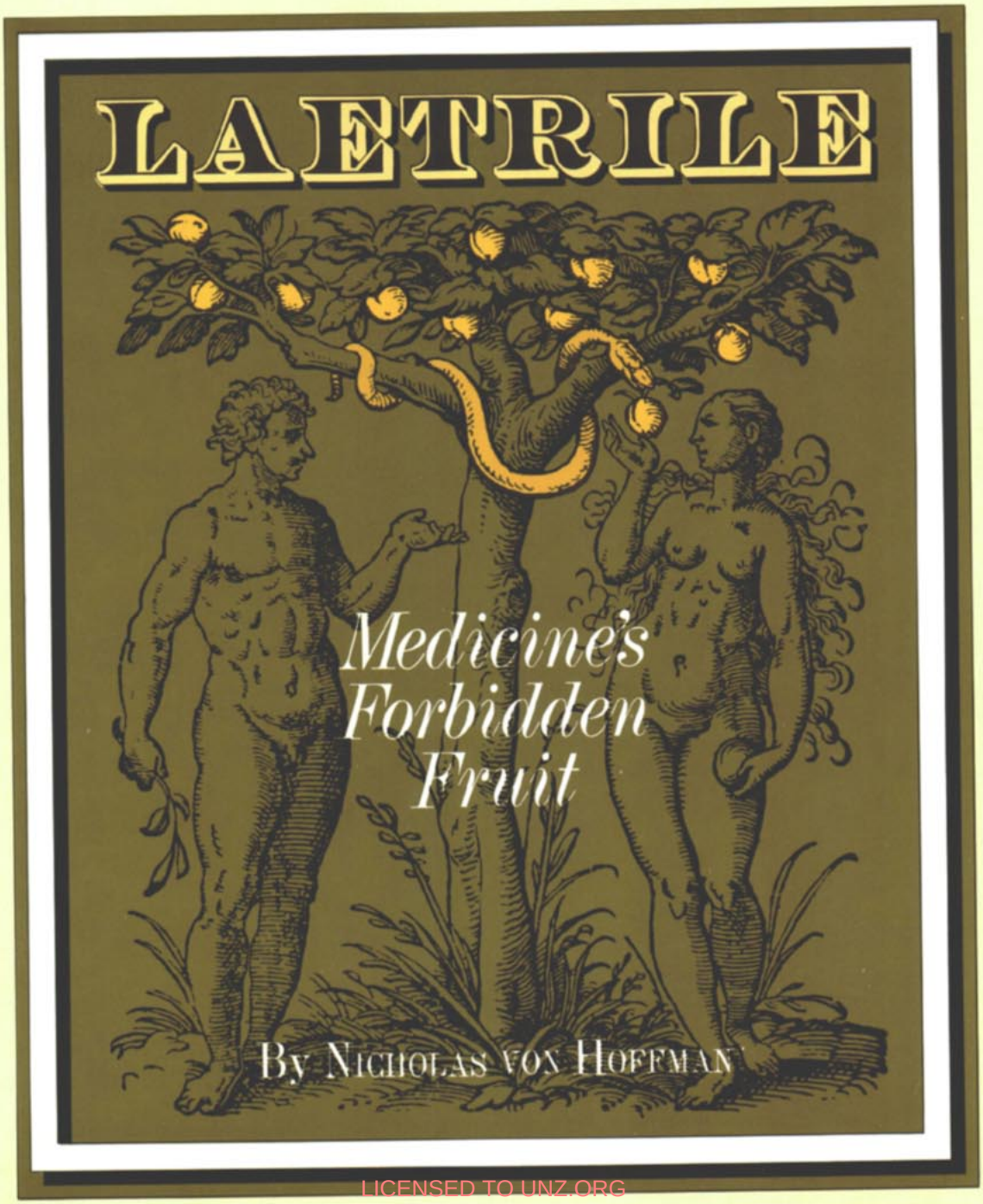
INQUIRY
MAGAZINE
AUGUST 21, 1978 • $1.25

Labor Department Conspiracy on Guam

Peter Schrag *on the Real Jerry Brown*

The Bakke Decision, Newsroom Searches



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INQUIRY

AUGUST 21, 1978

Locking up Guam for Local 3
BILL KELLER **p. 13**

Laetrile: Medicine's forbidden fruit
NICHOLAS VON HOFFMAN p. 18

Inquiries ..... **p. 2**
First Amendment
Whizzer White strikes again,
by Nat Hentoff ..... **p. 4**
Law
A minority of one,
by Judy Wubnig ..... **p. 6**
Politics
Affirmative action and pious fraud,
by Thomas Sowell ..... **p. 10**
Books
Reviews *by Peter Schrag, Athan Theoharis, William H. Pritchard & X. J. Kennedy* ..... **p. 22**
Film
Heaven Can Wait & Girlfriends,
Reviewed by Stephen Harvey ..... **p. 29**
Letters ..... **p. 32**

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RES PUBLICA

If you believe in fairies . . .

■ The chief of the FBI's Los Angeles office attacked The Times Monday for publishing a story on Paul Lin, a visiting scholar at UCLA who discovered he was being followed by FBI agents.

"If a bona fide law enforcement agency is conducting an investigation, then I think the American public and press have to assume that it's legitimate," Special Agent Ted L. Gunderson said. "You have just to take our word for it—if it's our investigation, it's a legitimate surveillance."

—Los Angeles Times, July 18, 1978

. . . then clap your hands

■ The United States Solicitor General says that news-gathering organizations are not in danger of having their offices searched as a result of a recent United States Supreme Court decision. . . . [Wade H.] McCree said that the fact that the Supreme Court had held that law enforcement offices could obtain warrants to search news offices probably would not have much effect.

"The Stanford case is a fluke," he added. "No one is going to search media offices without good cause."

—New York Times, July 9, 1978

Details, details

■ Charles L. Schultze, President Carter's chief economic adviser, says the Administration might turn to some form of tax incentive plan to combat inflation if the present voluntary effort to get unions and companies to accept smaller wage and price increases fails. . . .

He said the Administration was studying such incentives but there were significant problems to be worked out, such as whether business and labor would accept them.

—Los Angeles Times, July 17, 1978

If they'd just stick to making war

■ The Knesset, Israel's parliament, approved new legislation Thursday making it easier for religious women to gain exemption from military duty. . . .

Orthodox groups contend that the army's integration of sexes and the young woman's sudden freedom from parental oversight can corrupt their morals. "It is impossible to put a Jewish girl in a framework where her parents have no control over her. The girls aren't strong enough to resist temptation," said Rabbi Menachem Porush of the small but influential Agudat Israel Party, an ultra-Orthodox group whose four Knesset members, all rabbis, were the prime movers behind the bill.

—Los Angeles Times, July 21, 1978

With those salaries, they can afford it

■ Dr. Peter G. Bourne also said there was a "high incidence" of marijuana use among members of the White House staff, and he told of the "occasional" use of cocaine by "a few" of his former colleagues.

—New York Times, July 23, 1978

Not the place to talk about ethnic purity

■ West German officials here [Bonn] and in West Berlin are "a little bit nervous" over a "town meeting" that President Carter is to conduct in West Berlin next Saturday with about 1,000 residents. . . .

In such a forum, the West Germans are worried that the president might not have enough time to think about the impact of his words and could slip or say something about West Berlin or allied policy toward the city that could have important East-West repercussions.

—Washington Post, July 10, 1978

Just so he had a good time

■ President Carter yesterday vowed to hold down federal spending even if he must pay "political consequences" for unpopular actions, then viewed a military firepower display that cost taxpayers $1.1 million.

—San Francisco Examiner, June 25, 1978

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Carter's loophole for the MX

Missile madness

LAST MONTH, BARTON BERNSTEIN predicted in these pages that the strategic arms limitation treaty currently being negotiated would "not deny either the United States or the Soviet Union any major weapons system that their leaders desire." [*INQUIRY*, July 24, 1978] Just how extravagant those desires are is only now becoming clear. According to recent news reports, Jimmy Carter, under pressure from hawks in Congress and the Pentagon, has decided to seek a SALT accord that will leave the United States free to develop and deploy a new mobile intercontinental missile.

The mobile missile, or MX, reaches toward the ultimate in the technology of nuclear madness. Nearly three times as large as the currently deployed Minuteman III, the new mobile missile would be capable of carrying, to within 100 yards of a target, as many as 14 warheads, each twice as powerful as those on the Minuteman III. Originally, the air force planned to shelter the missiles in long, buried trenches, making it difficult for the Soviets to destroy them in a first-strike attack. But this option has apparently been rejected as technically unfeasible. The Pentagon is now planning to build up to 4000 silos to house 200–300 missiles. These would be shifted from place to place in a gigantic shell game meant to keep the Russians from guessing where the weapons are located. According to a study by the Congressional Budget Office, deploying and operating 300 MX missiles would cost $37.6 billion over the next 20 years.

The Pentagon wants the mobile missile system because it fears that its stationary Minuteman ICBMs will soon be vulnerable to a possible Soviet first strike. There are considerable differences of opinion about when this will occur—even Pentagon spokesmen sing different tunes about this threat, depending on whether they want to reassure Congress about the safety of the nation or scare extra billions out of the taxpayers. But it is inevitable that, as Soviet technology improves, the Russians will produce enough accurate ICBMs to have the capability of wiping out a large proportion of American land-based missiles. This is the problem the Pentagon wants to solve by building the MX.

But the Pentagon's "solution" is worse than the problem. Apart from being expensive, the MX will make the United States *less* secure. Though its mobility makes the MX an ideal retaliatory weapon to use as a deterrent to a Soviet attack, its power and accuracy would allow it to be a first-strike weapon. This is certainly how the Soviets would see it. Replacing 200 Minuteman III missiles with an equal number of mobile missiles would increase the American arsenal by 2200 warheads, each more accurate and deadly than those now deployed. This vast expansion of the American arsenal will make Soviet ICBMs, which make up more than two-thirds of the Russian nuclear force, potentially vulnerable to an American attack. Thus in a crisis, the Soviets, fearing a crippling blow, might be tempted to "launch on warning" and start a war that might have been avoided.

The Carter administration understands these dangers. Last year, the President's national security adviser, Zbigniew Brzezinski, conceded that the MX would be "extremely, extremely threatening" to the Russians. And only last month, in its "arms control impact statements," the administration acknowledged that the MX will give the United States "an apparent capability to destroy much of the Soviet intercontinental ballistic missile force in a first strike." This might cause Soviet leaders, the report concluded, "to strike first themselves." But these are risks that Jimmy Carter, the man who was going to rid the earth of nuclear weapons, is apparently willing to take.

The solution to the increasing vulnerability of our land-based missiles is not to create new and even more destructive weapons. We should instead, as we have urged before, get rid of our ICBMs altogether. Even without land-based missiles, the American force of nuclear submarines and bombers provides more than adequate deterrence. It is time for Congress, the Pentagon, and the President to put aside crazy dreams about attaining "nuclear superiority" and start down the road toward a safer, saner world. A good place to begin would be a SALT agreement that banned the development and deployment of new missiles, and an American decision to phase out land-based missiles. ❑

The administration's insurance plan

Health hazard

THE CARTER ADMINISTRATION has decided to go ahead with proposing a national health insurance plan. Although many of the specifics of the plan are still undecided, the President has expressed the desire to let the American people "know the principles and the framework for a comprehensive health care system." Certainly any plan he chooses will not only be universal but mandatory, and will probably have a price tag of anywhere from $50 billion to $100 billion a year.

Before his recent resignation, Dr. Peter Bourne was presidential assistant for health issues, and although he has left the administration, it is likely that his views and statements will be reflected in whatever plan is finally presented. According to him, one element of Carter's health insurance scheme will most probably emphasize Health Maintenance Organizations (HMOs), a type of organization strongly favored by President Nixon in his health message to Congress in 1971. With a clinic and a hospital as its base, an HMO has

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a staff structured to include doctors representing the whole range of medical specialties, serving all people within a particular geographic area. Subscribers pay a flat, periodic fee in return for "needed" outpatient and hospital care. In return, they have unlimited access to teams of physicians and nurses and all the latest advances in medical gadgetry.

But despite the attractiveness of HMOs to the bureaucratic mind, it is unlikely, Bourne admitted, that they would form more than just a single element of any compulsory health insurance plan in the near future. The primary structure of health delivery would remain as it now is, with patients choosing their physicians and doctors working out of private offices. The cost of visits, however, would be covered by health insurance premiums rather than by direct payment. Under the program Bourne envisaged, the massive funding for a national insurance scheme would come from a tax levied on employees and employers, with deficits paid for out of general revenues. However, to assert that a portion of any premium paid by employers is not also coming out of the pockets of employees obscures the truth about who will really pay for the program: the employees will underwrite the full cost of premiums. As everyone must by this time be aware, a payroll tax on employers is politicians' language for an increased tax on wages, since all expenses incurred by employers in connection with their employees constitute their costs of labor, whether they take the form of wages, fringe benefits, or premiums paid to government. So, in essence, the President's plan calls for substantial tax increases—in one form or another—on all workers, sick or well, and regardless of income level.

What of the many millions of Americans already covered by private insurance programs providing similar benefits? Indications are that the administration will propose their abolition. Again Bourne: "If the government sets minimum benefits and maximum premiums for all, can we give people the option of staying with private insurance plans they now have?" The problem, in his view, is that this would create two classes of care, one private and the other public, and would be counter to the goal of equity. So one more area in which the individual is permitted some choice over the decisions which affect his well-being is to be wrested from him in the interests of equitable treatment by a massive bureaucracy.

Who will benefit from mandatory health insurance? Certainly the chronically ill, the hypochondriacal, and the host of government functionaries needed to run the program. But, most of all, the nation's 280,000 physicians engaged in private practice. With the demand for physicians' services rising prodigiously, as the cost of a visit to a doctor drops to either zero or a nominal charge, and the supply of physicians—at least in the short run—remaining constant, physicians' incomes will increase dramatically. Indeed, the increased earnings of doctors which accompanied the introduction of Medicare, spectacular as they were, will be dwarfed by the projected windfall they stand to reap. A highly regarded study of the effects of national health insurance on medical care prices (by Keith Leffler of the University of Rochester and Cotton Lindsay of UCLA) estimates that physicians' earnings, 12 months after the full implementation of such a scheme, would quadruple and remain at comparably bloated levels for at least 10 years. In light of these probable consequences, it is no wonder that the American Medical Association has become an ardent champion of some version of national health insurance—particularly H.R. 1818, a plan with no provision for controls on physicians' income.

Probably the most distressing result of any compulsory national scheme, however, will be the increased depersonalization of health care. Patients now inured to a week's wait for an appointment with their physician will find themselves sitting around for ever-longer periods, reduced to numbers on a waiting list. Indeed, if price controls on physicians' incomes are introduced as part of the administration's plan—a possibility suggested by Bourne—the shortage of trained medical personnel will become chronic, and queuing up to see a doctor will, as it has in Great Britain, reach mammoth proportions. It is hard to believe that the 700,000 Britons reported in 1975 to be on waiting lists for hospital treatment are regarded as more than anonymous numbers by their physicians. Nor can there be much incentive for personalized care by a doctor when he knows that he will be paid regardless of the quality of the treatment and that there are a dozen prospective patients ready to replace each one who finds him inadequate.

With the administration and Congress wedded to some form of national health insurance as part of the government's increasing involvement in the health care field, and with the American Medical Association actively supporting some form of compulsory plan, it appears that once again the taxpayer and the patient are to be made the victim of the ever-increasing bureaucratization of American life. ❑

Seven naughty words

A dirty decision

IN VIEW OF THE IMMENSE AND increasing importance of the electronic media in our society, the Supreme Court's decision in the "seven dirty words" case (*FCC* v. *Pacifica Foundation*) is particularly dangerous. The Court, by 5–4, upheld the FCC's "reprimand" of WBAI–FM (a listener-supported station in New York) for having broadcast a piece by comedian George Carlin. Carlin's point was a fairly sophisticated one, having to do with the fear of certain Anglo-Saxon words. Justice Stevens thought the sketch "pig"-like, because it was broadcast at a time when some child twiddling with the radio dial might chance to hear it. The main mischief of Stevens's opinion is that he introduced a *new* rationale for treating electronic media differently from print. With cable-TV taking the rug out from under the "spectrum scarcity" argument, the reasoning is now based on the "uniquely pervasive presence in the lives of all Americans" of broadcast media. Because of this, the putative need to protect little children from hearing on radio the "patently offensive" words they just heard in the schoolyard sets strict limits to what may be said and shown in this whole area of our cultural life.

The good news is that the "seven dirty words" decision came on the last day of the Court's current term. So for a while at least we will be spared the "pervasive presence" of these absurd men and their absurd views. Considering the *Stanford Daily*, *KQED*, and other decisions, we hope that this latest one will not have a chilling effect on civil libertarians who wish to air what they *really* think of this Court. ❑

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NAT HENTOFF

Whizzer White strikes again

ON THE TENTH ANNIVERsary of Robert Kennedy's assassination, family and political friends gathered at Ethel Kennedy's home in Virginia. Among those present was Byron White, Jack Kennedy's only appointment to the Supreme Court. Justice White was not one of the more popular guests that day, and indeed one former associate of both Jack and Bobby came up to White and said with contempt, "What the Court has come down to is you and the four Nixon dwarves!" and stalked away. White, embarrassed, moved in the other direction. And there was no one to succor him.

The denunciation was inaccurate. The four Nixon appointees are increasingly split now—no longer a predictable bloc. For instance, in the Court's most publicized and fuzzily crucial decision this past term—*Bakke*—Blackmun voted not only for racial preference but also for quotas. And while Powell, the swing man, let Bakke into medical school, he also, and more significantly, gave the concept of affirmative action a constitutional basis.

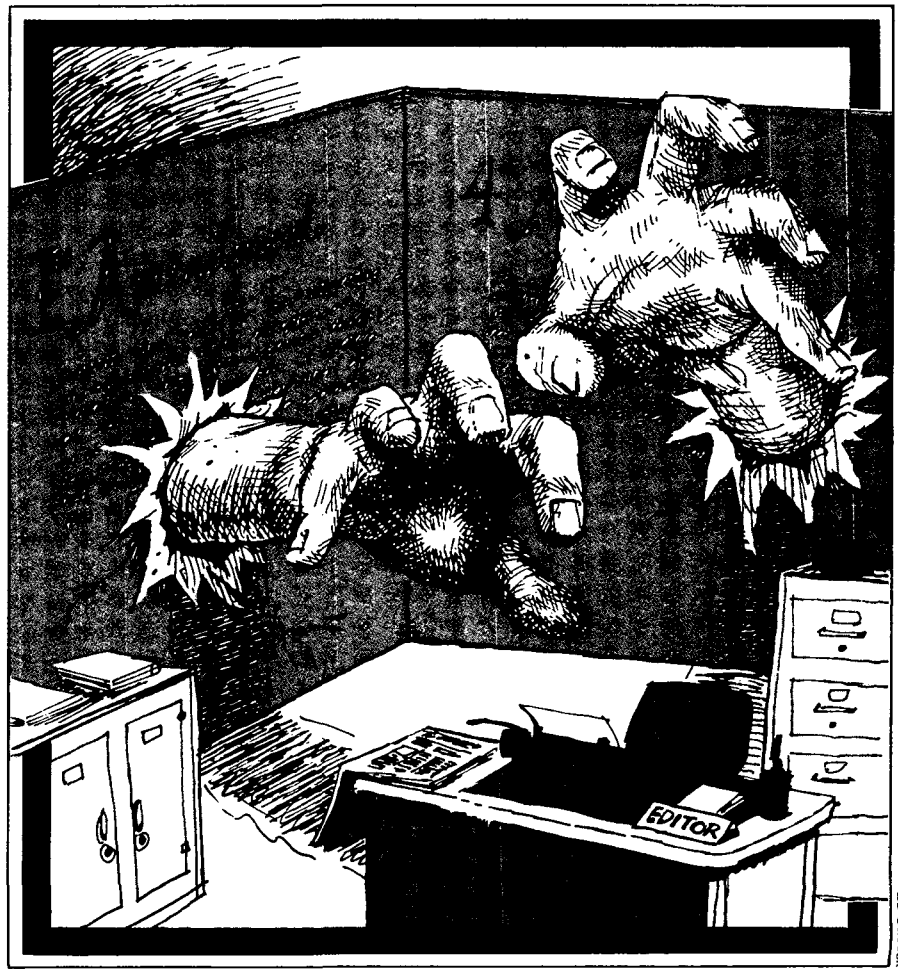
The confrontation with White, however, preceded *Bakke*. Even if it had not, the anger at White in that gathering of liberals would have not been in the least diminished, although he turned out to be very much for affirmative action. Another Supreme Court decision had made White the pariah of the party. In this one, *Zurcher* v. *The Stanford Daily,* White had indeed joined the four Nixon appointees in a 5–3 ruling (Brennan had been ill) that did more grievous injury to the First Amendment than any Supreme Court decision in this century. It also tore into the Fourth Amendment.

In some 20 years of covering the First Amendment beat, I have never seen such authentically spontaneous unanimity as in the horror with which the full spectrum of the press, print and broadcast, has reacted to *Stanford.* The majority decision, written by White, overturned the lower courts and upheld the right of police—with a mere search warrant—to make an unannounced search of the offices of a newspaper, rummaging about through filing cabinets, desks, and wastepaper baskets.

Anyone at all familiar with the precincts of a publication or a radio or television station knows what this kind of surprise search can come up with. Notes, sometimes from confidential sources, for a story not yet written. Interoffice memorandums questioning the credibility of leads, let alone of reporters. Photographs not used for any number of reasons that should be solely the business of editors. Outtakes (tape and film not put on the air). Address books, some of them including "anonymous" informants. And diverse private reporters' papers, which can range from imaginative drafts of expense accounts to the still tentative beginnings of a probe into local governmental corruption. (If made public, such tentative probes can bring about firm cover-ups.)

Yet Justice White advised the press they had nothing to fear from surprise police raids because careful magistrates will "confine warrants to search within reasonable limits."

IN REAL LIFE, THROUGHOUT this land there are some 30,000 judicial officials with the authority to issue a search warrant. And, as Congressman Robert Drinan (D.-Mass.), former dean of the Boston College Law School, notes with kindly understatement: "It is well known, and studies have confirmed, that magistrates do not refuse many requests for warrants." In most cases, all the



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Because of White's decision in Stanford, from now on "no file, desk drawer, or attic is insulated from surprise police scrutiny."

cops have to do is show up and extend their hands.

So, in response to Justice White's assurance that the press need not go into deep shock because of the *Stanford* decision, conservative columnist James Kilpatrick has responded: "His Eminence, Justice White, perhaps was born yesterday."

I have only begun to explore the First Amendment dimensions of the *Stanford* disaster, but first some factual background on the case itself. On April 9, 1971, demonstrators protesting the firing of a janitor at Stanford Hospital got into a fierce battle with police. Nine cops were injured, and only two of their assailants were identified at the scene. Since the *Stanford Daily* published photographs of the clash—none of which helped the cops—the police figured that a surprise search of the paper's offices might turn up photographs which had *not* been published but which could identify the other attackers. Off the police went to a municipal court, and even though there was no suspicion—let alone probable cause—that anyone on the paper itself had committed a crime, a search warrant was speedily issued. Although they searched the offices diligently and pervasively, the cops did not find the photographs they wanted. Whatever else they learned is known only to themselves.

The *Stanford Daily* sued the raiders, the chief of police, the district attorney, one of his deputies, and the judge who had routinely issued the search warrant—on the ground that the paper's First and Fourth Amendments rights had been assaulted. (The Fourth Amendment protects "the right of the people," including journalists, "to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.")

A federal district court agreed with the *Stanford Daily* and emphasized that since no one on the paper had been accused or even suspected of a crime, the police had no right to a search warrant. They should have tried to get a subpoena. The difference is pivotal. A search warrant requires no advance notice to those whose home or office is to be suddenly explored. A subpoena, on the other hand, is not enforceable until there is first a court hearing at which the person of interest to the police can argue that the cops have not made a sufficient case to rummage through his private papers and other personal effects. At the very least, the court hearing forewarns the citizen that the cops have designs on him.

AS FOR THE FIRST AMENDment, the district court added that since the innocent third party in this case was a newspaper, there had been all the more reason for the police to go for a subpoena, unless there was "clear showing" that on being forewarned, the journalists would destroy or remove "important papers." In this instance, the police had not even tried to make such a showing.

The Court of Appeals for the Ninth Circuit affirmed the district court's ruling; but up high, Byron White and the four Nixon justices overturned it all and found for the police. Why? Because, said Justice White, the search warrant is too important an investigative tool of the state to be curtailed in the manner outlined by the lower courts. Surprise raids do not violate the Fourth Amendment, even though "the owner or possessor of the place to be searched is not then reasonably suspected of criminal involvement."

White also tried to juggle the First Amendment problems involved. He, along with Chief Justice Burger, is of the view that the press itself has no special constitutional rights that everyone else doesn't have. That is, journalists' privacy rights are no more than those of other citizens. But what about the press's unarguable First Amendment rights to gather, analyze, and disseminate news? (Everyone else has First Amendment rights too, but not everyone puts out a paper.)

Well, said Justice White, "Where the materials sought to be seized may be protected by the First Amendment, the requirements of the Fourth must be applied with scrupulous exactitude." In other words, all those thousands of magistrates are going to be particularly careful when the local police chief asks for a warrant to bust into a newspaper or radio station. Even if it's in a small town where the local magistrate is part of the same political machine as the police chief—a machine that is being bombarded by the local paper.

And if you refuse to make that enormous leap of faith, in the wake of Justice White, you probably don't believe in the tooth fairy either. (Until the *Stanford Daily* raid in 1971, it should be noted, *no* search warrants had been issued against newspapers in the history of the Republic. Since then, there have been 14. How many since the *Stanford* decision? I'll be keeping score in this space.)

When the *Stanford* ruling came down, the press, as noted, howled. Said Tom Winship, editor of the *Boston Globe:* "I sometimes think that the print press is guilty of an occasional knee-jerk reaction to another punch in the ribs by the judiciary. But this latest decision from the high court is a gravely serious matter, the implications of which are impossible to exaggerate."

Dissenting Justice Potter Stewart agreed: "It requires no blind leap of faith to understand that a person who gives information to a journalist only on condition that his identity will not be revealed will be less likely to give that information if he knows that, despite the journalist's assurance, his identity may in fact be disclosed . . . Since the indisputable effect of such [unannounced police] searches will thus be to prevent a newsman from being able to promise confidentiality to his potential sources, it seems obvious to me that a journalist's access to information, and thus the public's, will thereby be impaired."

As for Justice White's soothing syrup about "careful" magistrates and "careful" police, the Reporters Committee for Freedom of the Press—in a brief asking the Supreme Court to reconsider its bonehead decision—pointed out that "a narrow warrant does not guarantee a narrow search. The Court noted that 'the warrant issued in this case' did not authorize the police officers 'to rummage at large in newspaper files.' Yet such rummaging is precisely what occurred." Furthermore, a

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surprise search "exposes not only the papers of the reporter whose information is being sought, but also those of other reporters and editors who are covering other stories . . . Indeed, where (as here) the document sought does not turn up, the officers may think that searching *everything* is their duty before they leave the premises."

Stanford, moreover, gives the cops easy use of another kind of far-ranging search tool. The decision can be read, as the reporters' committee says, "to uphold the constitutionality of wiretaps of news organizations on an application showing that the news organizations may have information relating to a crime." Consider the effect of taps on the phones of the *New York Times* when a purloined copy of the Pentagon Papers was missing. Or taps on the phones of Carl Bernstein and Bob Woodward as the Watergate story was being developed. For that matter, surprise police raids could have smashed either of those stories. As Senator Charles Mathias (R.-Md.) notes, if cops were searching the offices of the *Washington Post* back then, "Deep Throat probably never would have spoken."

A case might be made that powerful papers like the *New York Times* and the *Washington Post* could make so much noise—in print and through their expensive lawyers—about a police raid that authorities might draw back. But what about small-town papers? They could well be the most heavily penalized—and silent—victims of the *Stanford* decision.

AS THE PRESS CLAMORED, it gradually became clear that the Court had endangered *every* citizen, not only journalists. The innocent third party affected by *Stanford* could be anyone at all. Explained the American Civil Liberties Union: "If the offices and houses of innocent people can be searched without notice just because the police say they might contain papers relevant to a criminal investigation, there is not a newspaper, a bank, a store, a doctor's office, a law firm or a private home that can any longer claim the protection of the Fourth Amendment. No file, desk drawer or attic is insulated from surprise police scrutiny. Congress must act quickly to save the right to privacy from this devastating blow by the Supreme Court."

But how? Several bills have been introduced to reverse that part of *Stanford* which bears only on the press. There is not likely to be much broad, indignant public support for these narrow measures, partly because the press is in rather low esteem among the populace and mostly because citizens will not feel a visceral, personal stake in that approach. In any event, the strongest constitutional case is to focus on *everybody's* Fourth Amendment rights—a route that will also protect journalists' First Amendment rights. (If the cops can't get in, they can't collect confidential sources and otherwise disrupt and chill the news gathering process.)

Under the Privacy Protection Amendment of 1978, recently introduced in the Senate by Birch Bayh (D.-Ind.), any federal, state, or local official looking for evidence of a crime in the home or office of someone not implicated in the crime *must* get a subpoena rather than conduct a surprise search. Any cop violating that law can be sued for general damages and up to $10,000 in punitive damages.

Bayh's bill *does* allow the cops to move in without a subpoena if "there is probable cause to believe the evidence sought to be seized would be destroyed, hidden or moved" were advance notice to be given. (Presumably, with the threat of a civil suit against overly imaginative cops, that exception need not be a loophole. At least, not after citizens have won some suits.)

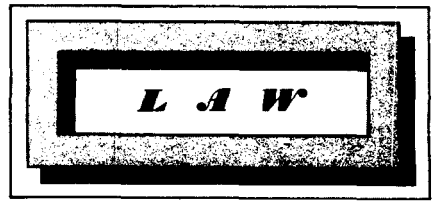
Meanwhile, the direct effect of *Stanford* on the press is being made manifest—even when there is no police raid. Testifying before the House Government Operations Committee, Robert Healey, executive editor of the *Boston Globe,* reported that a potential source had called one of his editors and offered information that sounded as if it might be vital to an ongoing story. The source would give no particulars, however, unless assured of anonymity. The editor so pledged.

A day later, the source called again and said he had decided not to cooperate. He had learned that the *Globe* was no longer in a position to protect his anonymity because of "the new law."

"What new law?" the editor asked.

It turned out that the once and former source was referring to *Zurcher* v. *The Stanford Daily.* He has not been heard from since.

As they know in Czechoslovakia, you don't have to actually hear the knock on the door to react to its possibility. ❑



JUDY WUBNIG

A minority of one

THE ALLAN BAKKE CASE should never have come up at all. The fact that it did indicates how far the United States has strayed from the principle of equality before the law since President Richard Nixon introduced the use of racial quotas by the government in 1969. It is crystal clear, as Justice John Paul Stevens says in his opinion, that the University of California violated Title VI, Section 601, of the Civil Rights Act of 1964: "No person in the United States shall, on ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." It is crystal clear that the university violated the Fourteenth Amendment to the U.S. Constitution: "No state . . . shall deny to any person within its jurisdiction the equal protection of the laws." And it is crystal clear that it also violated the precedents of court decisions, including those involving Authurine Lucy and the University of Alabama in 1955, Hamilton Holmes and Charlayne Hunter and the University of Georgia in 1961, and James Meredith and the University of Mississippi in 1962.

Yet it was only by a tenuous 5–4 margin that the Court decided the medical school of the University of California at Davis could not deny Allan Bakke admission because his skin is light and his last name not Spanish. Only four justices (Stevens, Warren Burger, William Rehnquist, and Potter Stewart) were willing to commit themselves to the position that

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the law can only take into account the actual deeds of individuals and not accidents of birth. Five justices (Lewis Powell, Harry Blackmun, William Brennan, Thurgood Marshall, and Byron White) held that universities may take race into consideration in admitting students.

How did the five justices manage to deny the obvious, that the law can take no cognizance of race? How did four of them manage to find it constitutional for a public university to deny someone admission because of his race and national origin? To deny the obvious requires confused thinking, and the opinions of these justices are indeed inaccurate, muddled, and self-contradictory.

The four justices who dissented from the Court's decision to uphold Bakke's suit were mired in a fundamental inconsistency. Along with Powell, they agreed that racial discrimination in admissions to public universities can be either constitutional or unconstitutional, sometimes right and sometimes wrong. The justices of course oppose discrimination against blacks. Yet the four agreed that the way to eliminate racial discrimination is to discriminate against people because of their race. Wrote Blackmun: "In order to get beyond racism, we must first take account of race."

This fundamental inconsistency led the dissenters into self-contradictions and blinded them to the meaning of their own words. Blackmun says, "We cannot—we dare not—let the Equal Protection Clause perpetrate racial supremacy." But, as we saw in the South in the days of Jim Crow, the legal superiority of one race over another is a sufficient condition for its racial supremacy. Blackmun's ringing words are in direct contradiction to what he intends them to support: the legal superiority—and thus racial supremacy—of Asian-Americans, American Indians, blacks, and people with Spanish surnames over whites without Spanish surnames.

Brennan says that we cannot let colorblindness become myopia "which masks the reality that many 'created equal' have been treated within our own lifetimes as inferior both by law and by their fellow citizens." He himself suffers so from logical myopia that he does not see that he is supporting precisely such treatment for whites by arguing for their legal inferiority under the Constitution. He asserts that whites as a class do not have any of the "traditional indicia of suspectness; the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment" which must be "compensated" for. Yet this very fact, according to him, constitutes the argument for saddling whites with precisely such disabilities and for subjecting them to unequal treatment.

SOME OF THE JUSTICES' discussions of legal precedents and of the Fourteenth Amendment could have come out of a satire by George Orwell. In order to uphold racial discrimination against Allan Bakke, Thurgood Marshall is driven to deny everything he fought for as a lawyer for the NAACP, even his own great victory in the 1954 school desegregation case, *Brown* v. *Board of Education.* He appeals to the precedents of all the old decisions made by the courts in support of racial discrimination against blacks, and he rejects all those of the past 40 to 50 years which overthrew those decisions:

> . . . during most of the past 200 years, the Constitution as interpreted by this court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now when a State acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution acts as a barrier.

So, for Thurgood Marshall such decisions as those in the Dred Scott case, the late nineteenth-century civil rights cases, and *Plessy* v. *Ferguson* are authoritative. It would logically follow from his argument that racial discrimination against blacks, perhaps even slavery itself, is constitutional.

As in Orwell's *Animal Farm,* the dissenting justices find that the Fourteenth Amendment, when it commands equal protection, is really permitting unequal protection of the laws. Marshall argues that blacks should be legally superior, since it is difficult for him "to accept that Negroes cannot be afforded greater protection under the Fourteenth Amendment where it is necessary to remedy the effects of past discrimination." Blackmun argues that because the Fourteenth Amendment was passed to protect blacks from being denied equal protection—that is, to guarantee them protection equal to that of every American—the Fourteenth Amendment was passed in order to guarantee them *unequal* protection—that is, legal superiority. The old white supremacists at least paid vice's tribute to virtue by *saying* that the facilities segregated by law were equal; they never *said* that whites were *legally* superior to blacks.

The dissenters argue that Allan Bakke, who was subjected to racial discrimination, was not a victim of such discrimination, and that the students who were given preferential treatment because of their race or national origin were actually victims of racial discrimination. For this reason, the dissenters maintain that the racially preferred students deserve compensation. Brennan says that relief for societal discrimination

> . . . does not require as predicate proof that recipients of preferential advancement have been individually discriminated against; it is enough that each recipient is within a general class of persons likely to have been the victim of discrimination.

Five justices held that racial discrimination by public universities is both right and wrong.

The flaws in this position are threefold: it denies what it affirms, it assumes a dubious causal relationship, and it presupposes the value of a spoils system.

If racial discrimination in the past was unjust, then it is now unjust against Allan Bakke. If it is not unjust now to discriminate against Allan Bakke, then racial discrimination in the past was not unjust. Brennan's inconsistent "compensation" principle can only lead to racial discrimination forever. If Allan Bakke is now discriminated against, then he, and, according to the argument, his descendants, and other whites without

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Spanish surnames will have a "legacy of past discrimination." They will then have to be compensated by discrimination against Asian-Americans, Indians, blacks, and people with Spanish surnames; and so on ad infinitum.

SUCH DISCRIMINATION, however, is no compensation for an injustice. It is individuals who suffer injustice and individuals who commit it. Only the victims of an injustice can be compensated for it, and only the perpetrator can do it. It would be no compensation to Allan Bakke if Davis medical school or any other school were to discriminate against Asian-Americans, Indians, blacks, or people with Spanish surnames. His only compensation is the one the Court awarded him—the order to Davis to cease discriminating against him and admit him.

The dissenters reject the "predicate proof" that Allan Bakke was discriminated against. Instead, they accept the probability that the students admitted under the special programs were victims of discrimination, since they belonged to groups whose members were likely to have been discriminated against. First, they argue, Bakke only experienced "benign" discrimination, because there was no intention to "insult" or "demean" whites as a class. But what is most insulting about racial discrimination is the deed, not the intent of the doer. James Meredith was insulted when the University of Mississippi refused him admission because of his race. In just the same way, Allan Bakke was insulted when the Davis medical school refused him admission because of his race.

Secondly, the dissenters claim that the reason the students admitted under Davis's special program did not have as good a record as Bakke was that they were victims of "a legacy of past discrimination." But no causal relationship between such a "legacy" and lack of ability and accomplishment exists. Most Americans share an analogous history, yet many are admitted into medical schools on their merits. Practically all Americans are descendants of people persecuted for religious, political, or racial reasons, of indentured servants, serfs, slaves, or convicts. Bakke's Norwegian immigrant ancestors may have had experiences like those described in O. E. Rolvaag's *Giants in the Earth.* Moreover, many who actually experienced discrimination or slavery itself have demonstrated their great abilities, from the great Stoic philosopher Epictetus, who was a slave, to Alexander Solzhenitsyn, a victim of the Gulag Archipelago, to those who, the dissenters imply, could not have succeeded by merit alone—American blacks like Frederick Douglass, Booker T. Washington, George Washington Carver, all born in slavery, and W. E. B. DuBois, Mary Bethune, Paul Robeson, and Thurgood Marshall. Davis medical school itself, in the years 1971–1974, let in members of "disadvantaged" groups on their own merit, through the regular procedures: 41 Asian-Americans, 1 black, and 6 with Spanish surnames.

Statistics cannot demonstrate the consequences of a "legacy of past discrimination" unless it is known what the statistics would be without past discrimination. It cannot be assumed that the percentage of people with certain abilities and interests is the same in each subgroup of the population. As is well known, the percentage of members of one particular minority group who are admitted to universities and graduate schools on their own merits is much greater than their percentage in the population. Nonetheless, for over 1000 years this group, the Jews, has been subject not only to discrimination and segregation, but to persecution and massacre. Davis's own statistics reveal that of the 252 students admitted through the regular program from 1971-1974, 41 or about 16 percent were Asian-Americans, even though Asian-Americans constitute much less than 16 percent of the population of the United States or of California. (This did not hinder the Japanese-American Citizens League from opposing Bakke and demanding preferential treatment, such being the lure of favoritism.)

At any rate, the only way to find out what any subgroup of the population would have done in the absence of discrimination is to stop discriminating and see what happens then. But this means judging individuals on their own merits.

Even if the reason for the inferior qualifications of students admitted under the special program at Davis was the "legacy of past discrimination," or "societal discrimination," or anything else, it does not follow that they should have been admitted over those better qualified. What might have been is not, and even if, under other circumstances, they would have had greater promise of becoming good doctors, they do not have that promise now.

LET US ASSUME, AS DAVIS medical school did, that on the average these students showed much smaller promise of becoming good doctors than Allan Bakke did. This means that with all the determination and hard work in the world many of these students will not become very good doctors but probably mediocre or poor ones. (Professor Bernard Davis of the Harvard Medical School reported on the poor performance of students admitted through Harvard's "special program" in the *New England Journal of Medicine* in 1976.) The value of a person's actual abilities and accomplishments is independent of the causes of those abilities and accomplishments. Davis medical school and the dissenting justices grant this by conceding that the students admitted through the special programs were less qualified than Allan Bakke; they go on to argue that this is the very reason they admit them over people like Bakke.

But this is the very reason *not* to admit them. Davis and the dissenting justices turn everything topsy-turvy by maintaining that applicants should be let in because they are *not* very promising. They see admission to medical school and getting jobs as doctors as part of a spoils system, where favoritism, not merit, rules. Marshall

The way to find out how a group would do in the absence of discrimination is to stop discriminating.

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The admissions policy at Harvard cannot be compared to that of a tax-funded university.

argues that programs like that at Davis are necessary because there should be more black doctors. What we need, however, is not doctors of any particular complexion or national origin or sex, but good doctors, the best available.

Five justices argue that a university can properly take the race of an applicant into account in admissions because of the need for diversity. Powell compares taking race into account with taking geography into account, as Harvard does; Blackmun says that universities "have given conceded preferences up to a point to those possessed of athletic skills, to the children of alumni, to the affluent who may dispose of their largesse on the institutions, and to those having connections with celebrities, the famous, and the powerful."

They forget, however, that Harvard is a private university not supported by the taxpayers except in special grants and aid to students. The University of California, on the other hand, is a public institution supported by the taxpayers of California. The only geographical preference it can give is to residents of California, and if it were openly to give preferences for the traits Blackmun mentions, there would be strong objection. Moreover, it is not a violation of the Civil Rights Act of 1964 for Harvard to take into account geography, athletic skill, wealth, or connections in admitting students, but it is a violation of that law for any institution using federal funds to discriminate on grounds of race. In addition, although it is not a violation of the Fourteenth Amendment for any state university to take athletic skills or many other traits into account, it is a violation for it to deny any citizen equal protection of the laws by taking race into account.

Powell cites Harvard's admissions policy as a model for considering race as a "factor" without using such rigid quotas as Davis did. As other justices point out, this is a distinction without a difference. It leaves entirely open how much race should count and which race should count for how much. Logically, it would allow the University of Alabama to give preferential treatment to whites, as it did in the past in pursuit of what it saw as a "substantial state interest."

But apart from the legal issues, ought race to be taken into account even by a private university like Harvard? As an ethical matter, the answer must be "no." As in any other field—learning physics, cooking, repairing cars—the test of a person's ability to learn medicine is his demonstration of that ability. Neither his name nor his complexion nor the shape of his nose nor his ancestry nor a myriad of other characteristics is relevant.

THE BAKKE DECISION indicates only one thing clearly—that the future is very uncertain for the American ideal of equality under law, the principle that "all men are created equal." That idea, first developed by the ancient Greeks, led to the abolition of slavery in Europe and later in America. It is embodied in the Fourteenth Amendment. That five justices of the Supreme Court were forced to maintain such self-contradictory and confused positions shows both its continuing power and the current threat to it.

The future consequences of the *Bakke* decision cannot be predicted. Who, after all, could have predicted that after George Wallace was compelled to allow blacks into the University of Alabama any public university in the United States would deny anyone admission because of his race? Who would have predicted government enforced hiring and promotion by race or national origin or sex when Title VI of the Civil Rights Act of 1964 forbids it? But it is possible to foresee the likely consequences of following the two opposing principles of inequality before the law or of equality before the law.

The first way leads to catastrophe. Laws are a means of regulating actions, and if the same actions are treated differently by reference to race or ancestry or sex or other accidents of birth, we have a situation characteristic of a caste society, like feudal Europe or the old South, where persons are imprisoned by the accidents of their birth. Such a caste system is already developing in the United States, with the future of many people at the mercy of government employees who decide whether or not they belong to favored groups. Congress also has been legislating favored castes; the Public Works Employment Act of 1977 stipulates that 10 percent of the federal money spent must be paid to subcontracting companies owned or controlled by blacks, Spanish-speaking people, Orientals, Indians, Eskimos, or Aleuts. Already the juggernaut of a caste system is overriding contracts between employers and the labor unions, as the recent Supreme Court decision in the AT&T case shows.

Thus we are beginning to become, not a society of different individuals, but a collection of quarreling tribes, fighting for preferential treatment at the hands of the government. As the fighting worsens, there will be diminished incentive to do one's best, and we will all, individually and collectively, suffer thereby.

Other unpleasant consequences are possible. Those like the Reverend Jesse Jackson who argue for racial inequality before the law are destroying the shield that protects blacks along with all other Americans. If race can legally be taken into account, then the siren calls of white supremacists may not fall on deaf ears.

The other way is that of the American ideal. It is the only rational ideal, for only equality before the law can give us the rule of law, and, with it, freedom. Moreover, if merit is the standard of judgment, each of us will have the incentive to do his best. Everyone, regardless of ancestry or sex, has a profound interest in promoting economic well-being and a higher degree of civilization through individual excellence. We are all members of the human race, the race which Justices Powell, Blackmun, Brennan, Marshall, and White ignore. Each one of us, like Allan Bakke, is a minority of one, the only minority that the Constitution recognizes and the only one that law can rationally recognize. ❑

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POLITICS

THOMAS SOWELL

Affirmative action and pious fraud

FROM START TO FINISH, "affirmative action" has been the most incorrigible kind of fraud—namely, fraud for a "noble" purpose. If the *Bakke* decision turns out to be the beginning of the end for quotas, it is perhaps fitting that it, too, has more than its share of disingenuousness. Since *Bakke* has been argued for and against as part of the whole controversy over affirmative action, it may be useful at this point to consider some of the basic premises or assertions associated with that policy, for most of which there is no evidence and all of which are, in fact, false:

- Minorities have improved their economic positions relative to whites since the government imposed quotas ("goals") on employers.
- After quotas ("goals") were imposed, women have risen to greater representation in the professions than in generations past.
- Minorities and women favor preferential hiring and college admissions.
- Black-white differences in income are due to different employer treatment of similar individuals.
- While European immigrant minorities were eventually able to achieve incomes and occupations comparable to the general population, nonwhite minorities cannot do so.

Let us take these claims in order.

The early thrust of the civil rights movement and equal-opportunity policy was that hiring and other decisions were to be made *without regard* to race, color, creed, or national origin. Even affirmative action in its early phase referred to special efforts to bring previously excluded groups into the pool of applicants, after which the actual decisions on college admission or hiring were to be made on the basis of individual qualifications. Only slowly—and, indeed, stealthily — did this metamorphose into numerical "goals and timetables." In December 1971, these "goals and timetables" became mandatory for government contractors and subcontractors.

The 1960s equal-opportunity phase of these developments can be separated from the post-1971 "results-oriented" quotas. The earlier period saw the first substantial increase in black incomes relative to white incomes. Black income as a percentage of white income reached its peak in 1970. It has never been that high again, throughout the whole era of quotas, massive bureaucratic intervention, and bitter social divisiveness. For a program that puts so much emphasis on results, affirmative action has few results to show for all its sound and fury.

No matter how the country was split up, the Gallup poll could not find a single group that was in favor of affirmative action.

A well-known cigarette ad says to women: "You've come a long way, baby." Everybody from Gloria Steinem to the Equal Employment Opportunity Commission is lined up to take the credit. But, without being picky about it, it might be worthwhile to first find out if there is any credit to take. Have women in fact come a long way? And in what direction? It is amazing how many basic questions never get asked.

The proportion of people in various high-status occupations who were female reached its peak in the 1930s and declined over most of the next three decades. For example, the percentage of law degrees that went to women was twice as high in the mid-1930s as it was in the late 1950s. The same is true of doctoral degrees in chemistry, astronomy, and the biological sciences. The decline was even greater in mathematics and economics. For doctoral degrees in general, women's share fell from about 17 percent to about 10 percent. Parallel with this was a decline in female representation on college and university faculties (including colleges run by women). The percentage of females among those listed in *Who's Who* was more than twice as high in the 1902 edition as it was in the 1958 edition. For the economy as a whole, female income as a percentage of male income declined over a 20-year period. from 1949 to 1969.

FOR THOSE CONDITIONED to look for evil intentions, or at least ideological explanations, for everything that goes wrong, it will come as a great disappointment to find that all of this is highly correlated with demographic trends. As educated women began marrying earlier and having more children, their representation in high-status positions declined. When these demographic trends began to reverse in the 1960s, women's representation in high-level positions began to rise—though still not yet back to the 1930s levels in some fields. The affirmative action quotas of the 1970s had as little to do with the trends as did male chauvinism.

The effect of marriage and childbearing on women's careers is also apparent in comparisons by marital status at a given time. As of 1971, single women in their thirties who had worked continuously since high school earned slightly *more* than single men in their thirties who had worked continuously since high school. The substantial differences in income between men and women which are found in gross comparisons are largely differences between married women and all other persons. Some statistical studies conceal this fact by including as "single" those women who are widowed, divorced, or separated. Obviously a woman who reenters the labor force in her thirties or forties, after having been a housewife for many years, is unlikely to earn as much as a man of the same age who was there all the time. It is so

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easy to ignore simple realities in the quest for sources of moral outrage, political crusades, and—if successful—bureaucratic empires.

When the knight in shining armor rescued the damsel in distress, the two usually ended up living happily ever after. But when affirmative action programs try to come on like knights in shining armor, the damsels tell them to beat it. So do minorities.

The Gallup poll in 1977 found that 64 percent of nonwhites opposed preferential hiring or college admissions (even when the alternative was "ability as measured by tests"). Eighty percent of women were also opposed. Indeed, no matter how the Gallup people split up the population—by race, sex, region, income, or education—they could not find a single group that was in favor of affirmative action. No wonder proponents of affirmative action try to achieve their goals (and timetables) through nonelected officials in politically insulated institutions like administrative agencies and the federal courts. Put it to a vote and the whole game would be over.

Of course, we know that the "leaders" of minorities and women are gung-ho for quotas and the like. But the media determine who is perceived as a leader, and people with urgent demands to make are better material for the tube than people who say, "Oh, cut the crap." Leaders have their own vested interests, different from those of the people in whose name they confidently speak. From this point of view, affirmative action and similar crusades can be seen as a sort of activists' full employment act.

The civil rights movement is a classic example of the tendency of organizations to pursue their mandated goals right on past the urgent and the optional to the questionable and the counterproductive. At one time it was all the NAACP could do to try to keep redneck sheriffs and the KKK (sometimes the same people) from terrorizing blacks. Once they had made some headway on that, they could give more attention to fighting Jim Crow laws. After shooting down segregation, it was on to school busing and then the fight against capital punishment (including trying to represent white murderers who didn't want to be represented). One NAACP lawyer candidly observed that the "golden days" of civil rights battles were over and that intellectual tools "had been developed which now threatened to collect dust," when he and his legal colleagues decided to lead the anti-capital punishment crusade.

CHRIS COREY

It is especially necessary to distinguish sharply between the institutional interests of organizations and the interests of those in whose name these organizations choose to speak, when considering changes in black-white differences in income and the implications of those changes.

At one time—and not too long ago—it mattered little what skills, attributes, or education a black job applicant had or did not have. In many places, he could just forget it. Changes in public attitudes, and then equal-opportunity laws, made personal attributes matter. How much do they matter now? Gross black-white differences in income will not tell you, partly because older blacks who began their careers under heavier handicaps cannot make it all up at this late date. But among younger generation blacks and whites, by the late 1960s individuals with similar home backgrounds and the same education had the same income—regardless of race. Gross black-white differences had not disappeared, but the reasons for the remaining differences between young whites and blacks were factors at work before they ever set foot in an employer's office.

This was a landmark, indicating not only the progress blacks had made, but also what was most urgently needed for the future. There was now much more to be gained by hitting the books than by hitting the streets. However, organizations have their own skills and their own inertia, and civil rights organizations are geared up to fight discriminatory treatment, not reading (or nonreading) problems.

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EASY PHRASES LIKE "majority" and "minority" obscure the important fact that there is no single American ethnic group that comes close to being a majority. Half of the American population cannot identify their ethnicity at all, presumably because of intermixture. The largest identifiable group are people of British ancestry—just 15 percent of the population.

Sometimes all the people of European ancestry are lumped together as "whites" (or even "Anglos"—which must come as some surprise to those of Celtic, Semitic, Slavic, and other backgrounds). The theory is that only the various white groups have risen from poverty to income levels around or above the national average. Like so many other statements about race and ethnicity, it is a short step from theory to "well-known fact"—the distance in between being filled with repeated assertions. In reality, Chinese- and Japanese-Americans have higher incomes than most white ethnic groups —the Irish, the Italians, or the Poles for example—and blacks of West Indian origin or ancestry earn more than 90 percent of the average income of whites. The point is not that race doesn't matter. It is that visible genetic differences do not spell doom to economic advancement, or even parity, however plausible or ideologically satisfying it may be to say so.

Those who hoped that the *Bakke* decision would point some way out of the legal morass of affirmative action were doomed to disappointment. The case was not declared moot like *De Funis*, but four concurring justices came close to declaring it moot for everybody except Bakke and the officials at the Davis medical school. They declared that the case was neither a class action suit nor a constitutional precedent. It required some fancy legal footwork to reach that conclusion, and the ominous question is why they went through such maneuvers.

Justice Powell's official opinion for the Court was a meticulous and majestic survey of the issues raised by affirmative action. But it was just one man's opinion. The four concurring justices (Burger, Rehnquist, Stevens, and Stewart) concurred only in letting Bakke in and ordering the medical school to change its admissions program. They explicitly repudiated any support for anything else Powell had said. The four dissenting justices (Marshall, Brennan, White, and Blackmun) disagreed with the judgment but concurred in part of the decision repudiated by the concurring justices. In short, there was a different 5–4 majority for different sections of the opinion. It couldn't be closer than that.

The *Bakke* case is less of a precedent than it might be, not only because of its paper-thin majority, but because it is clear that the four concurring justices did not want it to be a precedent. They insisted on deciding it on the basis of Title VI of the Civil Rights Act, rather than under the Constitution. Title VI provided no explicit basis for Bakke to file a lawsuit, so the concurring justices created a basis by creative and imaginative interpretation. They claimed that this exegesis was necessary because the Congress that enacted the law was so preoccupied with direct discrimination that it never really considered the possibilities of "reverse discrimination." Actually, the 88th Congress, which wrote the Civil Rights Act, debated "reverse discrimination" and its ramifications repeatedly and at length. Why the fictitious history? Certainly the learned justices knew better. If they didn't, the dissenting opinion of Justice White told them better in no uncertain terms.

What the concurring opinions under the Civil Rights Act (instead of the Constitution) achieve is to keep the Court's options open to decide future affirmative action cases as it sees fit, unhindered by a constitutional precedent. The Court paid a high price, in candor and credibility, in order to keep that option. The ominous implication is that it intends to continue judicial policy-making instead of constitutional interpretation. It thereby raises to the Supreme Court level the tactics employed by administrative agencies in affirmative action (and other) cases. Rather than setting forth the law in advance, the justices say in effect, "Do what you want, and then we will tell you whether it is O.K."

A government of laws and not of men was supposed to mean something more than this. And the Supreme Court was supposed to mean something more than nine more politicians in Washington.

Forthcoming in

INQUIRY

- *William Shawcross on Cambodia*
- *Robert Sherrill on Robert Kennedy*
- *Penny Lernoux on Brazil and the rise of fascism in Latin America*

INQUIRY is on its summer publishing schedule. With the next issue, dated September 18, we will return to our regular, biweekly schedule.

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LOCKING UP GUAM FOR LOCAL 3

by Bill Keller

How the Labor Department conspired with the Operating Engineers, the Dillingham Corporation, and prominent politicians to deliver the island to the union.

*LAST FEBRUARY, EMPLOY*ers in the construction industry on Guam sent a formal complaint to Secretary of Labor Ray Marshall alleging that Labor Department officials in San Francisco had conspired with the Operating Engineers Union and the Dillingham Corporation to award a $1.8 million CETA contract for job-training on the island. In March the department began an investigation of the charges, but to date it has issued no finding.

If the Labor Department has been slow in making a judgment on these charges, it is not because of a lack of evidence. Indeed, interviews and government documents reveal that Labor Department officials and politicians, notably Phillip Burton (D.-Calif.), attempted to use the CETA program to help the Operating Engineers lock up the construction trades on Guam. In so doing, they have apparently broken the law by circumventing competitive bidding requirements and exercising administrative powers to promote union activities and accomplish objectives far broader than the employment and training Congress intended. They have also attempted to disable competition from Asian firms by manipulating Guam's wage and labor structures. According to these sources, the department awarded a $450,000 training contract to the union—without soliciting bids as required by law—and issued regulations that raised construction wages and restricted the use of nonunion, alien labor. When Governor Ricardo J. Bordallo of Guam opposed these actions, Labor Department representatives threatened to withhold CETA employment and training funds as a means of obtaining his cooperation.

Oddly enough the Labor Department–Operating Engineers plan to lock up Guam's construction trades for the union had its beginnings not on Guam, but in Hawaii. Late in 1976, when unemployment in the Hawaiian building trades was high, Governor George R. Ariyoshi and representatives of various trade unions set their sights on Guam as a possible solution for the problems of Hawaii's construction business.

Guam was an obvious choice. Located 6000 miles from the West Coast of the United States, Guam is a central link in the chain of islands on which the United States has anchored its military might in the Western Pacific. Major installations on the island include a nuclear submarine base, a large naval ship repair facility, and a Strategic Air Command airfield. Military spending is almost always a boon for the construction industry, but in 1976, nature and the military combined to make Guam especially attractive to builders. In May of that year, Typhoon Pamela swept the island, causing major damage; shortly afterwards, the navy was prepared to let over $400 million in contracts for redevelopment and construction on Guam. Short-term spending of this magnitude presaged a booming economy and certain prosperity for the construction industry. Everyone, including Governor Ariyoshi's friends, wanted to share in the feast.

Especially eager was Local 3 of the International Union of Operating Engineers. Based in San Francisco, Local 3 has 35,000 members in a jurisdiction covering Northern California, Nevada, Utah, Hawaii, and the mid-Pacific Islands. Local 3 has long been interested in organizing on Guam—it assigned staff members to the island in 1963 and built offices in Agana, the capital, in 1971—but its efforts have met with little success. Union officials have conceded that as of August 1977, they had organized only about 130 of Guam's estimated 4800 construction workers. Therefore, in recent years the union has intensified its drive on Guam, hoping to cash in on what it contends will be "massive amounts of construction and industrial development in the next 10–15 years" for "storm repair," "oil depots," and "industrial and trade zone work to supply the booming Pacific Rim economy and the entire spectrum of ocean resources development."

Also anxious to get in on the construction boom in Guam was the Dillingham Corporation of Hawaii, a multinational conglomerate with a broad range of construction operations on the Pacific coasts of the United States and Canada, and in Hawaii, Australia, and New Zealand. Already involved on Guam through its subsidiary, the Hawaiian Dredging and Construction Company, Dillingham was looking for new ways to compete against local and Asian construction firms.

But it was not easy for the Operating Engineers or Dillingham to cash in on Guam's new construction prosperity. Guam's construction industry has

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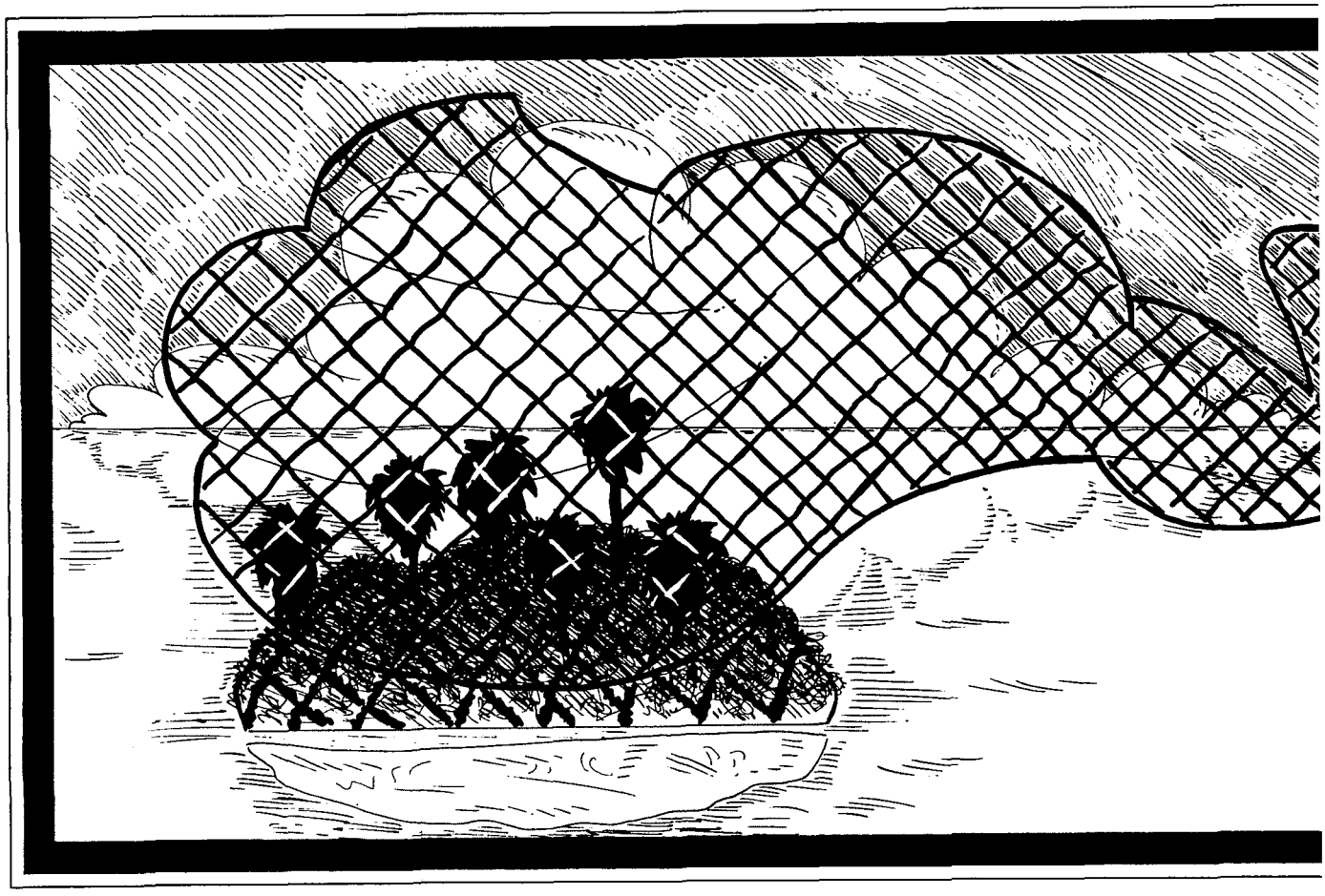

traditionally used foreign laborers, principally "non-immigrant aliens" from the Philippines and South Korea, who are admitted for temporary work assignments. These workers have been brought in to ease a shortage of skilled construction workers. Many Chamorros, or natives of Guam, look down on construction work. As a result, few of them have been trained in the construction trades, and those who are skilled often leave the island for the higher wages and better working conditions on Hawaii or the U. S. mainland. Hence, in March 1977, temporary alien workers held approximately 82 percent of Guam's construction jobs. Moreover, the ready availability of foreign workers has kept wages low. For example, in 1977 a construction electrician on Guam received $3.22 an hour, while his counterpart in Hawaii was paid $10.34.

The use of alien workers angers the Operating Engineers, who have termed it "the inhuman and cancerous exploitation of working people on Guam." The union asserts that the practice artificially holds down wages and forces workers to accept substandard working conditions. The union is also concerned that its efforts to organize the island have failed largely because alien workers are granted only temporary working permits and generally must acquiesce in conditions offered by their employers or face deportation. But firms on Guam, as well as many Japanese and Korean companies that do business on the island, depend on temporary alien workers to fill their demand for skilled construction artisans. Without a ready supply of relatively inexpensive Asian labor, they cannot compete with huge, off-island American firms such as Dillingham.

IT WAS WITH THIS IN MIND that the Operating Engineers and their government friends developed a strategy to unionize Guam's construction trades. According to informed sources, late in 1976 Governor Ariyoshi of Hawaii and trade union representatives met with Labor Department officials, including top Labor Department regional administrators William Haltigan and Royce Hulsey. At the meeting, they asked the Labor Department not to certify aliens for employment on Guam unless the employers there first recruited in Hawaii at prevailing Hawaiian wage rates. Similar meetings were held early in 1977. During these sessions the idea first surfaced of changing the certification of aliens and increasing wage rates to aid a union takeover on Guam. According to persons present at the meetings, Labor Department officials agreed to the concept of unionization for Guam, and supported Dale Marr of Local Union 3 in his plans to use the Comprehensive Employment and Training (CETA) program as a means of locking up the island. This could be accomplished if the Labor Department paid the union to run the CETA training program on Guam. CETA funds would then be used to recruit new union members and train them in organizing techniques, as well as in construction industry trades. The new union men would then enter "open shops" on Guam and apply their newly acquired skills.

Misuse of CETA funds on Guam has been commonplace for several years, and the training program has been an annual fiasco. In December 1976, a federal audit revealed "gross mismanagement and lack of control," and questioned nearly half of all CETA expenditures, an amount exceeding $1 million. Federal correspondence with Governor Bordallo chronicles numerous violations of CETA regulations, including "loss of control over program

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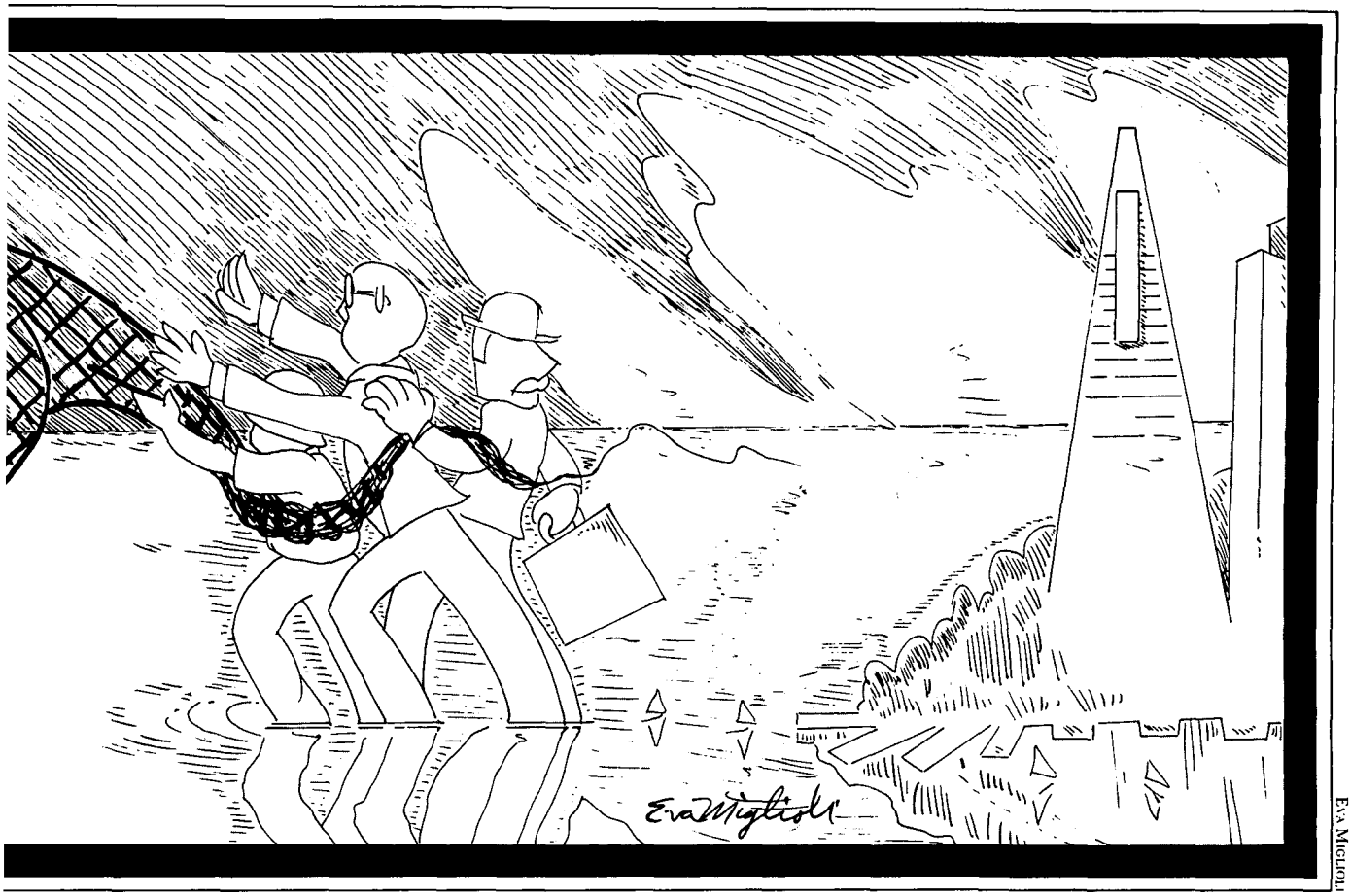

EVA MIGLIORI

activities," "enrolling and employing ineligible participants," and "improper expenditure of program funds." On March 10, 1977, the Labor Department fired the CETA staff on Guam and ended funding for all CETA training programs and related activities. Within a fortnight, the associate regional administrator for Region IX withdrew Guam's letter of credit for federal funds, charging that the governor had overdrawn the CETA accounts by $192,112.

In mid-August 1977, Regional Administrator Haltigan traveled to Guam to present proposals that would set up a construction-trades training program under CETA, double wages paid to construction workers over a two-year period, and provide for new alien certification procedures to be administered by the Labor Department. Local newspaper accounts of that period document the near universal panic with which the Haltigan proposals were received on Guam. On August 20, the *Pacific Daily News* reported, "The proposals are directly opposed by business, construction, military and government officials, who say the increases will come too soon and will have a direct negative impact on the island's economy." Haltigan's proposals included a requirement that any employer who used alien labor must pay higher rates determined by the U. S. Department of Labor. Governor Bordallo stated, "This whole thing is going to hit Guam like a bombshell."

ALONE IN WELCOMING

the proposal was Local 3 of the Operating Engineers Union. In a letter to Haltigan, dated August 9, 1977, union leader Dale Marr underscored his support for the proposals and warned, "I would point out to you that you can expect formidable opposition from a number of employees of federal [Government of Guam] agencies and politicians whose ox you will be goring. We are of the opinion, however, that the Carter administration, Secretary Marshall, and above all, Don Elisburg [assistant secretary of Labor] and the American labor movement will support your efforts on all fronts. Hang tough." According to another *Pacific Daily News* story, the Labor Department was under acute political pressure to solve the alien labor problem on Guam. "The pressure, sources have said, comes from the Governor of Hawaii, the AFL-CIO, representatives of the Departments of Defense and Interior and unnamed persons in the White House." In confirmation, Haltigan said, "Guam is something of a *cause célèbre* at the moment. This thing has been squirreling around at very high levels on Capitol Hill."

The new proposals and the reaction on Guam also caused consternation at the Department of Defense. On August 19, 1977, high-level Defense Department officials telegrammed Undersecretary of Labor Brown, stating that "the bidding for all construction work for military activities on Guam has been postponed because of confusion about labor availability and wage policy applicable to Guam, and that DOD's contractual efforts to carry out the typhoon damage restoration effort have come to a complete standstill." Apparently, the navy was under pressure to spend its Guam construction funds, which exceeded $400 million. It became incumbent upon the Department of Labor to produce a labor force and get Guam's house back in order—to make sure that future allocations for the navy would not be jeopardized.

On September 13, 1977, under the Immigration and Nationality Act, the

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Labor Department published new regulations that imposed "adverse effect rates," doubling the wages of construction workers on Guam over two years, with the first increment to become effective as of March 1, 1978. The regulations also specified new certification procedures for temporary alien workers on Guam, and provided that the certification process was to be administered by the U. S. Department of Labor. Many Guam employers reviewed the new regulations uneasily, fearing the Labor Department's new certification power. In the face of mandatory wage hikes, they questioned whether they could continue to compete with large off-island and multinational construction firms. Many cast a wary eye at the Operating Engineers Union, fully aware that the new regulations removed major barriers to a union takeover on Guam.

The Guam employers did not know that early in September the Labor Department had begun informal discussions with a private consulting firm in San Francisco. During October and November, Labor Department representatives briefed members of the firm's staff on the situation in Guam and showed them many documents and letters. The name of Congressman Phillip Burton cropped up more than once in their discussions as a reference point and, though unseen, a force to be reckoned with.

On November 16, 1977, the consultants met in San Francisco with the Department of Labor grants officer and his staff to discuss a way to refund the Guam CETA program. At that meeting a strategy was hashed out to hire and train a new CETA staff and to tender contracts to employers on Guam who had demonstrated training capabilities. Five days later, on November 23, the consultants submitted the final proposal to Associate Regional Administrator Hulsey. According to persons who were present, during that meeting Hulsey offered to hire the consulting firm to legitimize or "launder" illegal contracts with the Dillingham Corporation and the Operating Engineers Union, Local 3. When Hulsey made the offer, he mumbled under his breath. "What's that?" one of the consultants asked. "Dillingham," he repeated, "and the Engineers. The training contracts will have to go to them." On the following day, when the firm withdrew from the proposed scheme, Hulsey stated his intention to continue without its participation or assistance.

On the afternoon of November 18, 1977, another meeting took place on the ninth floor of the Federal Building in San Francisco. Labor Department administrators Haltigan, Hulsey, and Charles Pickens met with Local Union 3 officials, including Dale Marr, and with two executives of the Dillingham Corporation. Virginia Allee, regional administrator for the Employment Standards Administration, also was present. A plan to use CETA Title I funds to train construction workers on Guam was reviewed. The sum of $1.8 million was earmarked for the Engineers Union and Dillingham. At approximately 2:45 P.M., Congressman Burton arrived. Assistant Secretary of Labor Donald Elisburg arrived a few minutes later. The group exchanged greetings and the progress of the meeting to that point was summarized. Both Burton and Elisburg agreed on the soundness of the plan and on the scheme to set the union and Dillingham up in the training business. "Burton was brought in by the Engineers," one source said. "It was a show of strength; they go back a long way together."

Hulsey offered to hire the consulting firm to legitimize or "launder" illegal contracts with Dillingham and the Operating Engineers.

This entente represented the culmination of a longstanding political alliance between the Operating Engineers and the Burton machine. Burton, who presides over the House National Parks and Insular Affairs Subcommittee which oversees Guam and the Pacific Trust Territories, found himself in a position to help his friends—friends whose unquestioned loyalty could be tabulated in terms of large yearly campaign contributions and membership support. The Guam employers didn't know they never had a chance.

In December, the Labor Department sent representatives Jess Ramos and Tony Cordero to Guam to convince Governor Bordallo to go along with the union-Dillingham CETA training deal. According to informed sources, the governor relented only after he was told that his complicity was a condition for re-funding the CETA programs that had been terminated six months earlier. At that time, severe media criticism had been leveled at the governor's men for bungling the program and losing the CETA revenues and jobs. Presumably to protect his own reelection prospects, Bordallo agreed to support the union-Dillingham deal through a subcontract financial arrangement.

On January 18, 1978, the *Pacific Daily News* reported an agreement to start a new construction training program on Guam. The article stated, "The agreement was reportedly reached after three days of negotiations last week in Honolulu between officials of Dillingham Construction Company, the Operating Engineers Union, GovGuam and the U. S. Department of Labor."

BY LATE JANUARY, THE Labor Department was well on its way to insuring unionization for Guam and to meeting Defense construction industry needs. But for an indiscretion on the part of the associate regional administrator, the Labor Department might have succeeded in containing the alien problem, controlling construction industry wages, and enriching the friends of Phillip Burton—all at the expense of the people of Guam and the increasingly rebellious American taxpayer.

This indiscretion took the form of a memo to Haltigan, which fell into the hands of Michael McClure of the Guam Employers Council sometime in early February. In it, Hulsey alludes to the opposition of the Guam employers to the union-Dillingham training agreement. According to the January 30 memo, Dillingham Vice President Pete Errect suggested that the Labor Department use its new certification power to snap the already weakening opposition of the Guam employers. Hulsey wrote:

> He [Errect] said that a little pressure from us—some overt manifestation of our commitment—should do the trick.
>
> I asked for something more specific, and he said our most effective leverage in this situation was our certification actions. He thought that if word got out that non-cooperating contractors might have their certification requests reviewed with great pains, they would become noticeably more anxious to cooperate in the program.

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I see his point and agree that he is likely right in what he says. I told him we would do whatever we could do legitimately and legally. He thought that if that were our attitude, word to that effect ought to get out. I told him we would look into the matter and take the best course available to us.

At any rate, I agree that the opposition is weakening and full active participation by all contractors seems to be fairly imminent. We will feel our way carefully and give a fateful push when we feel the time is right.

To many Guam employers whose businesses depend on foreign workers, this memo signaled the Labor Department's determination to exclude local firms from operating the training program and, if necessary, to move against them economically—using the new labor certification procedures as a weapon. Contrary to its intended purpose, the Hulsey memo galvanized opposition to the training program. On February 10, 1978, attorneys for the Guam Employers Council, Black Construction Company, and Modular Homes, Inc. sent a formal letter of complaint to the secretary of Labor requesting an investigation. And on March 9, a suit was filed in federal district court on Guam to halt the award of the joint union-Dillingham contract.

Representatives of the aggrieved employer organizations and their attorneys have met with the Labor Department's investigators on Guam and provided substantial documentation supporting the charges in their complaint. In San Francisco, the investigators have questioned regional Labor Department officials closely and made copies of pertinent documents in their files. According to reliable sources who request that their names be withheld, the investigation team was informed of Congressman Burton's involvement, including the meeting of November 18—in which he and Assistant Secretary of Labor Don Elisburg met with the Operating Engineers and Dillingham to approve the joint training program. In addition, they were given copies of correspondence and complete information regarding the private consulting firm through which high-ranking Labor Department officials attempted to "launder" the training contracts under investigation. Since March, four months of official silence have elapsed. According to federal regulations, the secretary of Labor must investigate all complaints promptly, publish findings within a reasonable time, and provide an administrative hearing in all appropriate cases. Despite impressive evidence, repeated efforts, and rising costs, the Guam employers and their attorneys report that they "have been unable to secure any relief, prompt or otherwise, from the Secretary of Labor."

Faced with a lawsuit in the district court and the internal Labor Department investigation, the Dillingham Corporation has backed away from the union-management deal and its coercive tactics which were revealed in the fatal Hulsey memo of January 30. On the other hand, the Operating Engineers and Labor Department regional administrators remain unflappable—seemingly oblivious to the course of recent events and unconcerned about the as-yet unpublished findings of the investigation.

Both Burton and Elisburg agreed on the soundness of the plan and on the scheme to set the union and Dillingham up in the training business.

*ON MAY 13, 1978, THE DE*partment of Labor awarded a construction training contract to the Operating Engineers Union in the amount of $450,000. General President Jay Turner of the union jetted to San Francisco for the signing ceremony. A union press release of May 13 said, "Turner complimented Secretary of Labor F. Ray Marshall and Representative Phil Burton (D.–San Francisco) for their cooperation in establishing the new training program." The statement quoted Turner as saying that Burton had been very active in supporting the Department of Labor and the Operating Engineers in their efforts on Guam. The contract provides funds to train 150 workers in construction trades, and to upgrade the skills of 50 additional workers. Dale Marr, who was present both at the November 18 meeting with Burton and at the signing ceremony, characteristically predicted, "If Guam contractors do not cooperate with the government by hiring these workers once they are trained, the Labor Department undoubtedly will have to tighten its enforcement of federal wage and hour rules."

This remark makes it clear that union leaders anticipate the continued assistance of the U. S. Labor Department in their drive to organize the construction trades on Guam. And they may just be right. It is likely that most of the 200 union trainees will turn out to be union men. If 10 percent of them also receive training in organizing techniques, the union will then have a 20-man task force to spread its influence across the island. Under current regulations, no contractor who uses alien labor will be able to refuse union-trained workers. And since all contractors depend on alien labor, all will have to welcome the newly trained worker-organizers. For the next 18 months, the union can consolidate its membership while "adverse effect rates" push up industry wages.

Large American construction concerns like Dillingham are favored by these conditions. Because wages are established by the Labor Department and paid through Defense Department contracts, cooperation with the Operating Engineers becomes a viable and paid through Defense Department contracts, cooperation with the tractors will dwindle as increased payrolls and tighter controls on the use of alien labor force many contractors out of business. As wage rates in Guam approach parity with those on Hawaii and the U. S. mainland, importing American workers will become more and more common. Foreign construction firms, which have traditionally depended on cheap labor and advantageous currency exchange rates for their competitive edge, will be handicapped by increased unionization and Labor Department policies structured to accommodate American interests and workers on Guam.

Several unanswered questions remain. They suggest that a full congressional investigation of this matter may be appropriate: What, if anything, did Representative Burton and the governor of Hawaii get for their troubles? Was their action a political payoff involving public funds? Why has the Labor Department investigation been stalled? By what reasoning has Secretary Marshall failed to grant an administrative hearing or, in fact, take any action in the face of blatant official wrongdoings perpetrated by top Labor Department administrators? And finally, what remedies will be available to the Guam employers when Local 3 has succeeded in locking up the island? ❑

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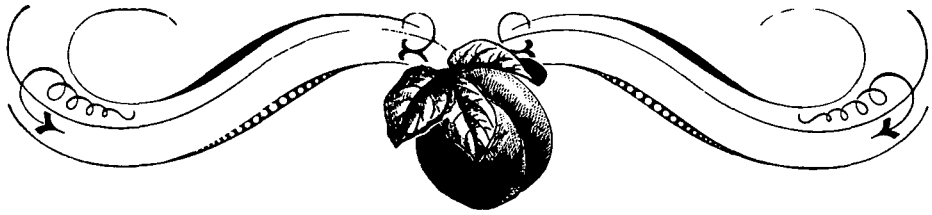
When Ernst T. Krebs and his son plucked Laetrile from the apricot tree, they didn't count on the wrath of the FDA and the medical establishment.

LAETRILE: *Medicine's Forbidden Fruit*



by NICHOLAS VON HOFFMAN

THE MOST VIOLENT, THE MOST PROtracted, the most public, and the nastiest controversy to occupy modern American medicine—the Laetrile battle—is in temporary remission. With 17 states having legalized the substance, this oh-so-fought-over cancer drug has been able to win greater legal acceptance than marijuana. At the same time, the Feds continue to fight every step of the way. The Food and Drug Administration recently got the 10th Circuit Court of Appeals to partially overturn the ruling of an Oklahoma federal judge who had suspended FDA regulations against importing this disputed chemical, extracted from apricot pits. Nevertheless, the appeals court decision permits doctors to prescribe Laetrile to terminally ill patients, making it a victory of sorts for the drug.

Over at the National Institute of Cancer, the federal agency which has distributed the approximately $10 billion already spent on cancer research, they are collecting case histories from physicians who have used Laetrile on patients. These histories will be sent some time in September to the doctors making up what the health bureaucrats call "the decision network." If the decision network flashes a go-signal—an unlikely event in light of this controversy's history—the first government-approved tests of Laetrile on cancer patients will be started.

Since Laetrile has been around in its present form since 1949, and since it's a compound occurring in nature with far fewer side effects than most things cancer patients are asked to put in their bodies, you might wonder why the nearly 30-year delay. (What side effects it has—if any—is a source of some controversy.) The answer isn't that amygdalin, to give Laetrile its proper chemical name, is refined from an undignified source like apricot pits. Insulin has attained the highest respectability in medical circles, and it was originally extracted from the pancreas of a pig. Rather the reason why, to this hour, no serious test of the drug has been made on cancer patients in America has far less to do with science than with the sociology of science, the nonscientific motivations for the professional behavior of scientists and doctors.

From the day of its birth, Laetrile had the wrong social pedigree. It was invented by two San Francisco men, Ernst T. Krebs, *père et fils*. The father, who began working on his cancer drug in the 1920s, was a bona fide medical doctor, although he was not connected with any university or academically recognized research institution. Krebs, the younger, who is given credit or blame for extracting, purifying, and rendering Laetrile in the form it is now used, holds no advanced degrees in medicine, pharmacology, or physiology, although he appears to have done a great deal of study in those fields at several highly regarded universities. Over the years, a number of scientists with all sorts of advanced degrees have said that Krebs, Jr., does in truth have professional competence in these areas. Yet while we may make demonstrated proficiency the only prerequisite for graduating from high school, in higher, more recondite climes, it's not what you know but how many parchments and diplomas you have. But even two-time Nobel Prize winner Linus Pauling, with a demonstrated track record as a world-class medical researcher, hasn't been able to get a dime from the mitred abbots at the National Cancer Institute because, with all his prestige and credentials, his ideas

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on this subject are, well, shall we say "different"?

Or there was the case of Dr. Andrew Ivy and an anti-cancer substance called Krebiozen. Ivy, the author of hundreds of scientific papers, a frequent expert court witness for the Food and Drug Administration, and the director of the Clinical Sciences Department of the University of Illinois, in no way lacked credentials. But Krebiozen was another one of those drugs whose proponents were never admitted to the medical Social Register. The results were that Ivy, who championed testing and investigating it, was driven from his post, had his career ruined, and was indicted for what amounted to 40-odd counts of quackery. After a 289-day trial, which must have bankrupted the man, he was acquitted, but nothing could rehabilitate the poor devil's reputation.

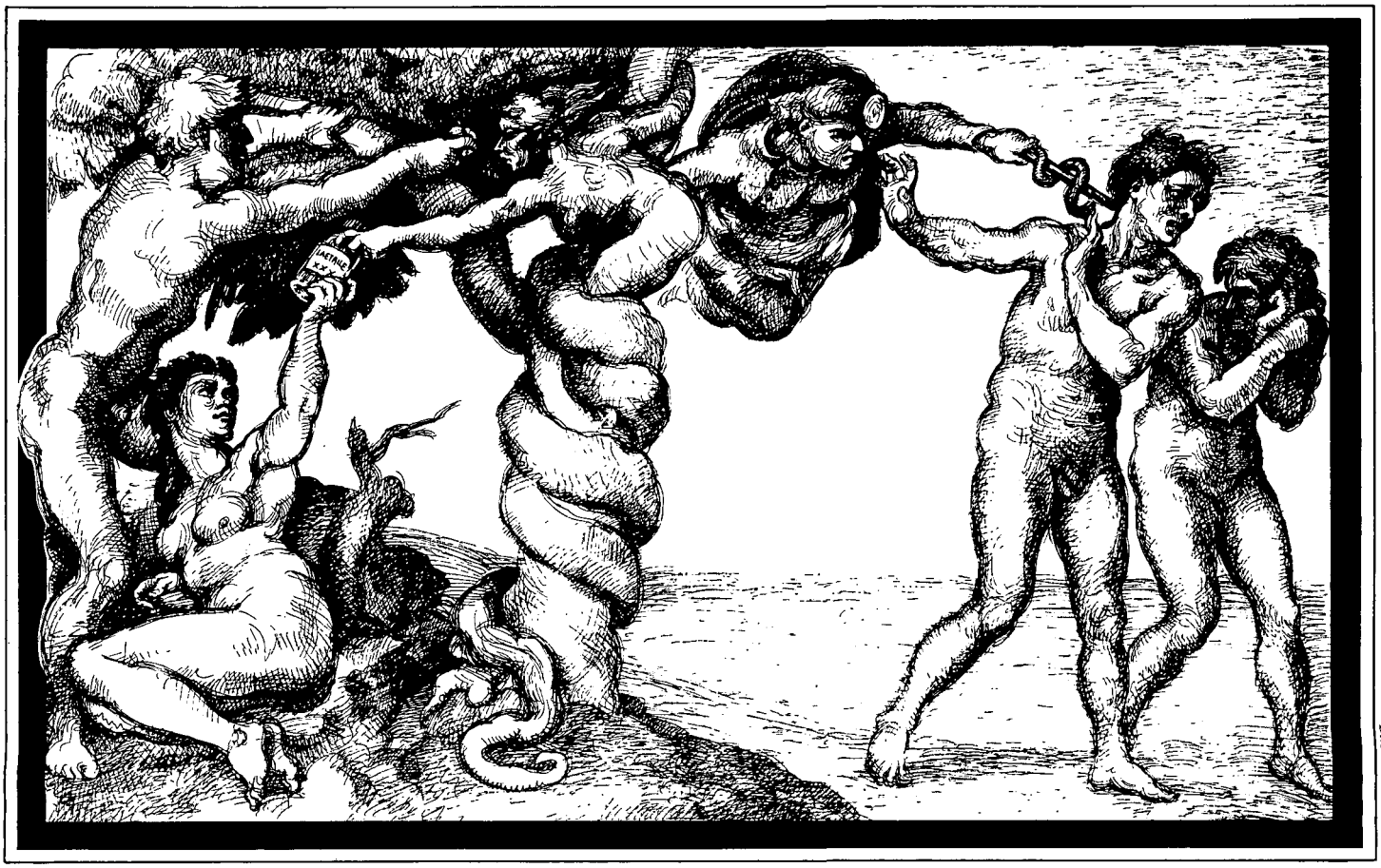
The Ivy-Krebiozen fracas took place in the mid-1960s, so you can see that the FDA has long thought of the criminal courts as the proper place to settle scientific controversy. In that period, the Krebs family and their drug were not yet well known, but the Krebses had already suffered some painful altercations with the law.

Their troubles began in 1953 when a committee of the California Medical Association called a press conference to say it had investigated Laetrile and had determined it was worthless. You have seen better documented statements on medicine in Tylenol commercials. The condemnation was based on the case histories of 44 cancer patients, most of whom had received miniscule doses of Laetrile—doses too small to do any good in the opinion of those who believe in the drug. In addition, some of these patients were also the recipients of other therapies so that the resultant hodge-podge made interpretation of the data difficult if not impossible. As a grisly footnote, which illustrates the state of understanding of the doctors on that committee, the chairman accidentally killed himself in a fire caused by a lighted cigarette, and the secretary, also a heavy smoker, died of lung cancer.

FOR ALMOST THE NEXT TWO DECADES, this study would be used not only as the basis for trying to suppress the drug but also for bringing charges against a number of its supporters. Krebs, the father, was enjoined in 1965 from distributing Laetrile and charged with criminal contempt when he shipped the drug to a hospital in Alabama and to physicians in Utah, Texas, and Washington. A year later, he pleaded guilty to another contempt charge for doing the same thing and then was given a one-year suspended sentence for failing to register as a producer of drugs as defined by the Food, Drug, and Cosmetic Act. (Proponents of Laetrile or vitamin B-17, as it is sometimes referred to, call the substance a food and claim that, as such, it is exempt from federal regulations governing drugs.)

Krebs, the son, was also running into problems with the law. He pleaded guilty to violating the same law under which his old man was sentenced. Junior was fined $3755 and was put on three years' probation.

The convictions made the Krebses' foes libel-proof. They could attach words like fraud, charlatan, and quack to the two scientists without fear of being sued. Moreover, in the health and medical professions, which will let you slice up your patients like salami without anyone snitching to surviving relatives, the curse of Cain was now on Laetrile. The mere whisper that a physician might be soft on Laetrile was enough to get him expelled from the country club and have



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his name painted off his parking space at the hospital.

But Laetrile's social standing would drop even lower. Next the drug would be associated with a gunrunner and what to the Anglo-Saxon orthodox ministers of medicine would appear to be a bunch of poorly trained, nonprofessional, greaser medicos.

Early in the 1960s, Laetrile was taken up—some say as a cause, some say as a business venture—by a Canadian named Andrew McNaughton. McNaughton is supposed to have made his fortune running guns to Israel and then later to Castro in the Sierra Madre Mountains. This unusual figure set up a foundation, which he named after himself, to sponsor "deserving research which promises breakthroughs in important new areas where sufficient professional acceptance does not yet exist to gain the support of the usual foundations or agencies." The foundation explained that such research was necessary because the "increasing government involvement in science and education has resulted in loss of scientific independence and an increasing vulnerability to edicts, guidelines, regulations, and structures stifling independent initiative in solving problems."

American medicine is shot full of practices for which there is no scientific or clinical basis.

All kinds of slimy critters who made their money in the most disgusting ways are allowed to set up tax-exempt foundations without criticism, if they give money to build new wings on hospitals and channel their donations into programs and institutions of unquestionable propriety. Al Capone could contribute to some establishment cancer center, and if he gave enough, he'd get a plaque, a scroll, and a testimonial dinner in return. But endeavors with the objectives of the McNaughton Foundation, even if it hadn't gone into backing Laetrile, are not welcomed by the canons of the cathedral of medicine. In no time at all, the McNaughton Foundation was accused of being a receptacle of Mafia money. McNaughton says such allegations are stuff and nonsense arising from the fact that many years ago the foundation made Laetrile available to a stricken lady whose brother was rumored to be a gangster of some sort. Laetrile is claimed to have prolonged her life for many years. The brother, whatever the source of his funds, donated $130,000 to the foundation's work of facilitating the manufacture and distribution of Laetrile at reasonable prices.

Laetrile's Mexican connection only served to lower the drug's esteem. Since Laetrile was legal in Mexico and there were a growing number of patients in the United States who wanted to try it, it made functional and economic sense to establish clinics just across the border in Tijuana rather than in West Germany, where Laetrile is also legally manufactured and prescribed by physicians. Unhappily, Tijuana is a name too closely associated with abortion mills, brothels, and unwashed dysenteric vegetables. To the racist or at least elitist moguls of medicine on this side of the border, it now appeared that this worthless substance was being handed out by unscrupulous as well as unsanitary Mexican doctors of slight training and racketeerish inclination. These impressions were strengthened by the fact that American doctors seldom went to see for themselves, but relied on various lower-class detectives who would find whatever corroborating evidence their upper-class, professional superiors indicated they wanted found. In the 1976 prosecution of Stewart Jones, a Palo Alto physician accused of the Laetrile heresy, an undercover agent for the state of California named Natasha Benton testified that her bosses had coached her as to what evidence she was to find and write up in her reports. It happens all the time in police work, journalism, or science—we come up with whatever it is we're looking for, which may be why the Bible is so unequivocal in promising that those who seek shall find.

In all of this, Laetrile's proponents have thought they've descried a conscious dishonesty, but, in truth, a man like Dr. Daniel S. Martin believes what he's saying when he calls Laetrile a "quack cancer nostrum." From the perspective of a man who is chairman of the Committee on Unorthodox Therapies of the American Society of Clinical Oncology (study of tumors) and a senior associate at Columbia University's Institute of Cancer Research, it would be surprising if he came to any other judgment. Data or no data, most people of Dr. Martin's background would naturally think a drug with Laetrile's social history was worthless. After all, Krebs, Sr., first got onto the Laetrile trail back in the 1920s when he was testing bootleg whiskey for purity at the behest of those who illegally sold it. If that's how medicine's greatest discoveries are made, then why do we have all these splendid and university-connected research facilities?

THE LAST ELEMENT WHICH MADE IT impossible for establishment medicine to take a long, hard scientific look at Laetrile was the support the drug got from John Birch Society people, as well as others on what is still regarded even by conservatives as the paranoid right. Birch Society people, if not the society itself, took to defending doctors accused of using Laetrile and generally agitated for its decriminalization.

Although many a doctor may have sympathized with some of the Birch Society's stands, medicine's antagonism to little old ladies in tennis shoes was already cemented in place by the time the right wing got interested in Laetrile in the early 1960s. Those same little old ladies had irritated professional orthodoxy by being the only vociferous group in the country to crusade for better quality food and to proclaim the idea that many diseases were environmentally caused. Until the hippies came along, the entire health food industry was sustained by right wingers, then regarded as eccentrics, who complained of chemical fertilizers and additives in processed foods. Medicine was particularly irritated at the refusal of this element in the right wing to accept fluoridation. Those Birchers, who called it a species of Communist conspiracy to poison the country, wrecked themselves by exaggeration and made it easier for doctors and dentists to campaign for fluoridation with little more solid evidence in favor of its safety and efficacy than they had for the condemnation of Laetrile.

Even now, skepticism about fluoridation is only beginning to grow, but the whole notion of a toxified environment might have remained boxed up on the right and dismissed by the rest of the society had not *The New Yorker* published Rachel Carson's "The Silent Spring." For the first time, the liberal ladies of Larchmont were told by a prestigious and respected source that it might not be too healthy to take

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DuPont and Dow Chemical at their unsupported word. Thus the agitation was begun which would lead to laymen forcing institutions like the American Cancer Society to consider a wholly different etiology for the disease.

Laetrilists of both right and left persuasions have often said they suspect the reason for medicine's resistance to the treatment is that there's not much potential profit in it. Amygdalin, as hardly more than purified apricot pit, is a nonpatentable substance. But this thought is something of a slander on the many doctors who aren't only concerned with money. One can only sympathize with Dr. Emil M. Freireich of the nationally respected M. D. Anderson Cancer Hospital in Houston when he cried out at a public hearing on Laetrile, "You surely cannot believe that a quarter of a million of American physicians are sitting on a cancer cure just so they can get rich?" He might have added that in the Soviet Union, where there are no drug companies and the system of compensation for physicians is quite different from our own, the use of Laetrile is also forbidden.

In a way it is more comforting to imagine that the bastards are killing us out of greed than to face the possibility that they are acting out of simple unscientific prejudice. Yet the facts are that American medicine is shot full of irrational practices for which there is no reason in science or clinical practice. This is the case with the most frequently performed of all surgical procedures—circumcision or ritual infant mutilation. Circumcision was occasionally practiced in nineteenth-century America as a kind of punishment for masturbation by older boys and girls (in those days, the medical establishment believed that that activity was a cause of madness). At length, the antimasturbation thesis was discarded, but the practice was performed on an increasing number of baby boys as a higher and higher percentage of births took place in hospitals. The ritual cutting was advocated as a hygienic procedure, as if God had created the human body so that you couldn't get it clean without an operation. Most recently, it has been justified as reducing the incidence of cancer in either the male himself or his mate. No worthwhile data backing up such conclusions exists, but hundreds of thousands of little American baby boys continue to go through the trauma of having their foreskin snipped off by thousands of doctors, who're profoundly convinced that what they're doing is medicine when in actuality it's voodoo.

MEDICAL BEHAVIOR UNRELATED to scientifically validated information occurs in the treatment of countless diseases including cancer. If Laetrile could serve as an example of failing to test a potentially helpful approach, there are also examples of continuing with approaches and procedures for which there is little or no evidence of patient benefit. "The massive educational, diagnostic and therapeutic attack on mammary carcinoma of the past two decades has failed to alter rates of incidence and mortality of this most frequent malignant neoplasm in female patients. Reports of the therapy of mammary cancer in the surgical literature often lack significance through selected samples of small size and the lack of statistical validation," wrote Dr. Ian MacDonald, a cancer surgeon of world repute back in 1966. MacDonald was also the gentleman who chaired the committee which doomed Laetrile in 1953 and who later incinerated himself. Interestingly, in his handling of the Laetrile investigation, he did exactly what he would later accuse his colleagues of doing with breast surgery, i.e., relying on a statistical sample which was too small to be significant.

So it is that the same person can act like an impartial scientist in one connection and like an opinionated and uninformed layman in another. Be that as it may, 12 years ago MacDonald could already clearly see something else which would account for the large, almost massive interest in Laetrile: the war on cancer was being won by cancer. Except for the relatively rare Hodgkin's disease and certain forms of leukemia, also quite infrequent, cancer mortality rates have been stuck at virtually the same levels for at least 30 years. In a few types of cancer (bone, lung, esophagus, vulva, lip, and penis—this last also relatively rare, thank goodness), the mortality rates have even gone up. All in all, after decades of one kind of research fad or another—the viral theory, the immune system theory, the this theory, and the that—the panjandrums of the medical bureaucracy have been beating a strategic retreat on the carcinoma front. Donald Kennedy, the head of the Food and Drug Administration, announced a few weeks ago what the lay public had long since learned from visiting the casualties of malignancy in the hospitals—that the war against cancer has become "a medical Vietnam."

$10 billion later, Washington admits that the war on cancer has become "a medical Vietnam."

Laetrile has also been the beneficiary of a renascently popular free market sentiment which has attacked all regulation, but particularly the FDA for fumbling and delaying so long in its paper-stamping and form-processing that a number of therapeutically valuable substances have been withheld from patients who need them. Hence there is now special public irritation with Venus flytraps like the FDA, even though the fact is that all drugs have side effects which may or may not be worse than the disease, and few of them have any therapeutic value. We can't expect the high Pooh-Bahs of medicine to give up the authority they wield over therapies by willingly discarding the seal of approval that they alone are permitted to affix. But the Laetrilists' desire for a choice has chipped away at that authority.

The FDA has certainly done little to reassure skeptics about its regulatory rationality. To this day, if you call them up to inquire about Laetrile you will get a voice on the line dripping with hostility toward those who favor the treatment. The implication of their approach is that only the gullible and crooked could take Laetrile seriously. But the FDA gives no weight to the observations of trained clinicians as to the apparent benefits of Laetrile treatment. Such results should not just be tossed aside, just because the Laetrile experiments on laboratory animals have yielded conflicting and disputed results. At a minimum, rigorously conducted tests on voluntary human subjects are in order.

But the thought that the little old ladies in tennies may be right seems to be too much for organized medicine. After all, it took the doctors several centuries to get over the fact that the famous Puritan clergyman, Cotton Mather, was correct about smallpox inoculations and the most learned physicians of his day dead wrong. ❑

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JERRY BROWN: The Man on the White Horse, by J.D. Lorenz. Houghton Mifflin, 267 pp., $8.95.

BROWN, by Orville Schell. Random House, 307 pp., $10.00.

JERRY BROWN: The Philosopher Prince, by Robert Pack. Stein and Day, 293 pp., $10.00.

JERRY BROWN: In a Plain Brown Wrapper, by John C. Bollens and G. Robert Williams. Palisades Publishers, P. O. Box 744, Pacific Palisades, CA 90272. 272 pp., $9.95.

Doing up Brown

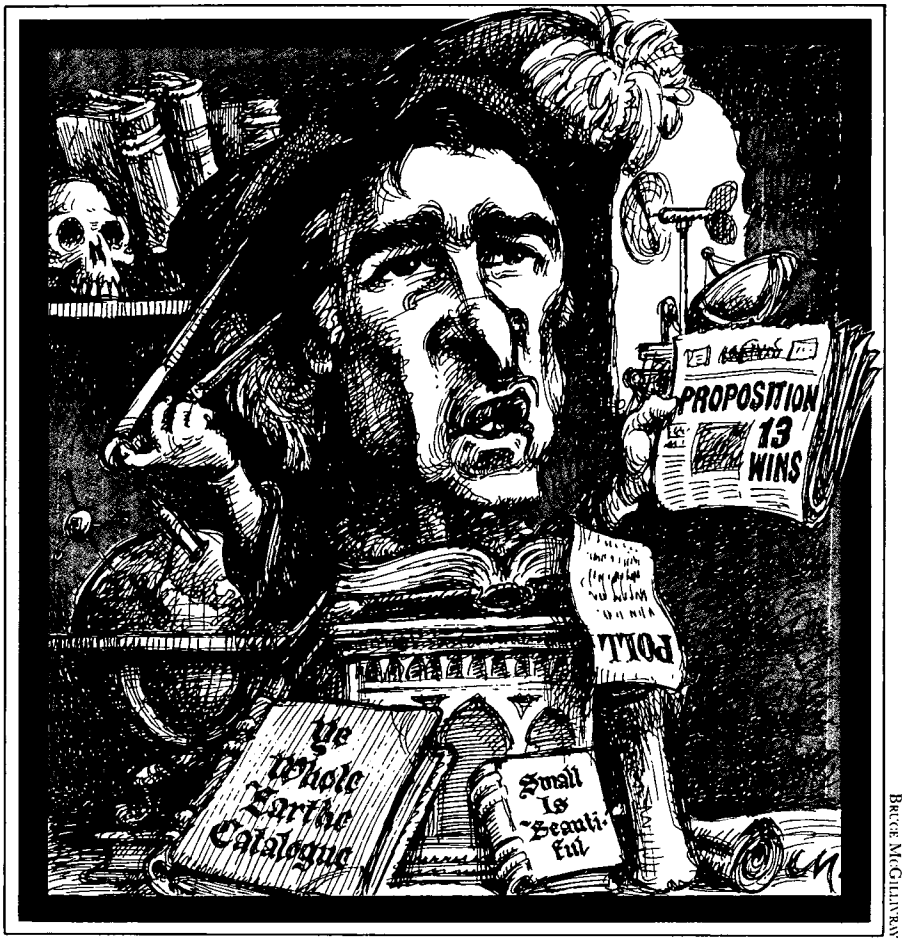
PETER SCHRAG

THE MORE ONE READS about Jerry Brown, the less one understands. Even before he had won a handful of presidential primaries in 1976 as a last-minute candidate, the governor of California had persuaded a lot of people that he not only embodied the real post-Watergate mood of the electorate, but that he was in touch with universal forces beyond the bounds of conventional politics. Thus we had Brown as Mr. Clean; Brown the ex-Jesuit (which, of course, he wasn't); Brown as Zen master; Brown as monk. By the time he had flashed through the primary pans of Maryland, Oregon, Nevada, Rhode Island, and New Jersey, the Brown mystique was fully developed, and although some journalists pretended to have explanations, their efforts usually made the mystique even more impenetrable.

The fault may simply lie with the journalists—though some of them are rather skillful—or it may lie in the as yet unconsidered possibility that there is a lot less to understand about Brown than most people assume. In that respect the man so often called "the kid" (to distinguish him from his father, a conventionally successful politician who was California's last governor but one) may really be different. The ordinary politician wants his public to believe that he is shallower and more common than he really is. The present governor of California, so often promoted as an antipolitician, may be just the reverse: there may be less here than meets the eye.

However that may be, what is clear, at least from a reading of the four books under consideration, is that understanding Brown is still a long way off. Two of these books, Schell's and Lorenz's, only pretend to make the effort. Lorenz served for some six months in the Brown administration; Schell followed Brown around for what the book jacket claims was a period of two years, but, considering the results, he could have gotten the job done much more quickly. Both books are sprinkled with some tantalizing gossip, the best of which has already been quoted in the papers—bits about Brown's sex life (or lack of it); anecdotes about media manipulation; quotations from midnight conferences at the San Francisco Zen Center, where the governor sometimes likes to pass the time; stories picked up on plane trips overseas or at political dinners with Jimmy Carter. The bits add up to very little.

Schell is sympathetic; Lorenz, whom



BRUCE MCGILVRAY

PETER SCHRAG is a contributing editor of INQUIRY. His most recent book is Mind Control.

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Brown fired from his state job, is bitter. But both have produced what are essentially celebrity books for readers who prefer politicians to television personalities or movie stars. (Since Brown sometimes hangs out with people like Linda Ronstadt, readers with eclectic tastes can get a little of both.) The quality which both books share is a sort of insiderism in which the writer's presence is more important than what he reports. Thus Schell lets us witness the moment when Ronstadt asks Brown's driver to stop the car so that she can go relieve herself at a Texaco station; thus Lorenz lets us hear Brown's remark about "buzz words" at the taping of a television campaign commercial:

> "Buzz word, buzz word, buzz word, buzz word, buzz word," he said gleefully. "That ad has five buzz words in it. I sound tougher than Flournoy [his opponent in 1974], and I haven't proposed anything the liberals can criticize me for. In fact," he crowed, "I haven't committed myself to do anything at all."

This sort of insiderism—call it political soft-core porn—has grown great since television intruded itself on the political process, thereby not only turning politicians into media celebrities, but, at the same time, generating the compulsive need to expose the real person in front of the camera. Its flaw, necessarily, is that it "exposes" in the same terms in which the subject tries to manipulate the image in the first place. It operates in the same dimensions and therefore distracts from the more fundamental ideas, qualities, and passions, which, because they were not part of the public package, need not be considered in the insider's exposé.

LORENZ IS PARTICULARLY prone to this affliction. Having hitched his wagon to what he thought was a star, he discovered that he was working for just another actor. As Brown's director of the California Employment Development Department, Lorenz cooked up a great scheme, whose details only he still remembers, to create thousands of new private sector jobs. After Brown showed no great enthusiasm for the plan, it gradually dawned on Lorenz that his patron, like every other politician of our time, was at least as interested in images as in substance. That discovery, slowly made and painfully absorbed, leads him to some heavy rhetoric but to no certain conclusion. At the end of the book, we are still not certain whether the confusion of image and substance is the fault of Brown or of the system, or, in the final analysis, of Lorenz himself. What we do know is that Lorenz did not quit in indignation over Brown's double-dealing. Brown fired him. Brown 1, Lorenz 0.

Schell's stories are better, but there is still no perspective other than the notion that Brown is driving the White House crazy—that he is to Carter what the Kennedys were to Nixon.

A possibility not yet considered is that there's a lot less to understand about him than is usually assumed.

The only real authority for that is Richard Reeves, a political writer who, in the unlikely event that Brown does become President someday, is certain to write a better book than Schell's. "I'm not sure about Carter himself," Schell quotes Reeves at the end of his book. "But most of his staff are terrified of Brown. Just terrified." This, of course, is where the book should begin, but it cannot begin here because there is probably nothing about Brown to justify the fear.

The two more serious efforts in the current list, the books by Pack and by Bollens and Williams, partly compensate in information for what they lack in style. Both try to lay out Brown's background—the old politician's rebel son, the seminarian, the Gene McCarthy liberal—to explain his current politics. Yet neither is certain just what that background is supposed to explain. Our three authors are certain that Brown is some sort of philosopher. Bollens and Williams tell us about "The philosopher governor," Pack about "the philosopher prince," "the governor as philosopher," and the "philosopher as governor." Yet the philosophy is thin gruel; one part E. F. Schumacher's "small is beautiful," a dash of Zen, a pinch of space jargon, and a bagful of aphorisms. Incredibly, all of that is supposed to add up, in the view of Bollens and Williams, to something unique in the history of Western civilization:

> If training and rhetoric are effective measures, Jerry Brown is possibly the closest embodiment of Plato's classic view of the ideal public guardian. Because of these parallels, the Brown administration may be providing a testing ground for the wisdom of the Western world's most important early political theorist. Can a philosopher ruler actually function effectively in the real world of politics?

The fact is that, with one or two exceptions, Brown has grabbed some marginal ideas to mystify the semiliterate, clumps from the *Whole Earth Catalog*, jargon about "appropriate technology," invocations of the "era of limits." But there is no visible attempt to understand those ideas, to trace them back to their origins, or to implement them. Thus he likes to quote Schumacher, but apparently has never read either John Stuart Mill (who expresses the idea of limits far more elegantly and radically) or the contemporary British economist E. J. Mishan (who, with the virtue of a genuinely conservative consistency, believes that modern technology will produce a totalitarian disaster in which the technocrats will seek "final solutions" for the hordes of the economically superfluous).

AS A PRACTICAL MATTER, Brown has never had the political *Sitzfleisch* to deal with the ordinary matters of state government. Thus, while he berated the education establishment for its failure to teach effectively, and while he remained suspicious of the state's mental hospitals, he never understood how the "era of limits" might be applied to the reduction of state intrusions into areas where it had no business. He withheld funds for the state mental hospitals, thereby making them even more monstrous than they had been before, but never moved to reduce their population of involuntary patients. He dramatically told representatives of the teachers' lobby that he would provide no more funds until there was reform, but never managed to suggest a way to curb the bureaucracy that was gobbling up the funds. Therefore it was inevitable that, in the face of that lack of leadership, the old style would prevail, and that he would be forced to cough up the money.

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What the antipolitician was doing in the meantime was presiding over the proliferation of a new layer of government—a collection of growing state agencies regulating the environment, controlling energy, policing consumer fraud, and fostering "appropriate technology." Nothing in state power was limited, nothing abolished; state power was simply extended in some new ways to utility companies, chemical firms, and other corporations which were thus getting a little of the same treatment that schoolchildren and mental patients have always gotten from the state. In the end, of course, the corporations will probably find a way of coming to terms with the agencies set up to control them, or even of controlling their tormentors. The mental patients never will.

None of our authors examines this proliferation or discusses Brown's failure to translate "the limits of government" into limitations on government. None therefore understands that beneath the rhetoric, Brown is just another liberal like his daddy. Like many contemporary liberals, he is suffering from what may be a fatal lapse of faith; unlike them, his standing as a sort of professional apostate makes him more qualified than most to articulate liberalism's failures.

BROWN KNOWS WHAT NOT to do, but he knows not what to do. At this writing, the passage of California's Proposition 13 is confronting him with the greatest political crisis of his career, not only because it places severe constitutional limits on all property taxes, and hence on all local and state spending, but also because it radically alters the structure of local government and its relationship to the state. By voting so overwhelmingly for Proposition 13, the voters could be seen as merely endorsing the limits which Brown sometimes speaks of so fondly. But they also forced him to do what he likes least (and what any politician tries to shun in an election year) and that's to deal with the complexities of budgeting, policy, and the most fundamental priorities—they forced him, in other words, to take concrete positions on fundamental political issues. You want limits, Brown, we'll give you limits.

Characteristically, Brown, who had opposed Proposition 13 as a potential disaster for California, joined the revolt, began talking about slashing budgets, and cozied up to old Howard Jarvis himself. The problem with that tactic is that while it might allow the governor to score a few rhetorical points, Proposition 13 itself was an expression of anger, containing no specific directives on how it is to be implemented. It is virtually inevitable that its implementation will offend powerful constituencies, and particularly the liberal constituencies on which Brown depends.

But however he handles what must be done in the wake of Proposition 13, for Brown himself the real disaster is that from now on the state that had been known for Jerry Brown will be the state of Jarvis-Gann. The hero thus becomes the cuckold, the man who was had by the same people and the same universe he was supposed to understand so well. So much for philosophers. ❏

THE GREAT FEAR: The Anti-Communist Purge Under Truman and Eisenhower, by David Caute. Simon and Schuster, 697 pp., $14.95.

Enduring legacy

ATHAN THEOHARIS

MANY AMERICANS STILL view the late Truman and early Eisenhower years as the period when Senator Joseph McCarthy and his distinctively demagogic politics were ascendant; for them especially *The Great Fear* is must reading. Although that period's atmosphere of political repression, which resulted in wholesale violations of individual liberties, has come to be known as "McCarthyism," David Caute convincingly shows that the Wisconsin senator had only a minor role in creating it.

McCarthy's aim—to purge American society of the "Red Menace"—was, Caute reminds us, shared by most politicians of the Cold War era, conservative and liberal alike, although McCarthy pursued the aim more crudely, and, for a time, more effectively. Whether motivated by real fears of Communism or by the desire for personal gain—or, in many cases, by both—"McCarthyite" politicians and citizen-militants were the all-too-frequent norm. The vast extent of this movement is confirmed by Caute's in-depth review of federal loyalty and security programs; the principal legislative enactments and congressional hearings; the more important court rulings; and the vigilante activities of crusading anti-Communists who sought to cleanse American society of the slightest taint of radicalism and nonconformism.

Caute's many anecdotal exhibits illustrate the breadth and depth of "the great fear." Brooklyn college president Harry Gideonse undertook a purge of his school. An ex-FBI agent profited from the blacklisting of entertainers named in his newsletter, *Counterattack*. And Pennsylvania state judge Michael Musmanno in his courtroom and Atomic Energy Commissioner Lewis Strauss during security hearings became notorious for their blatant political bias.

Immigration officials at the time used their powers with impunity to deny admission into the country or to deport those whose politics they considered too radical, including Cedric Belfrage and Ellen Knaupf. The American Bar Association and the American Medical Association adopted rules denying membership to Communists. So preposterous did the mania for loyalty tests become that Indiana required an affidavit of non-Communism from anyone desiring to wrestle professionally in the state. A U. S. soldier even underwent a security investigation because of the political activities of his mother-in-law—although she had died when he was 10 years old, 10 years before he met his future wife.

CAUTE REJECTS THE CONVENTIONAL wisdom that the anti-Communist crusade was the inevitable byproduct of the Cold War confrontation between the United States and the Soviet Union. He does so, first, by contrasting this American response with the absence of a comparable phenomenon in Great Britain. In the process, he takes issue with those American social scientists who have

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In the name of "national security," conservatives accepted a vast expansion of state power.

acclaimed the "genius of American politics" for its "pragmatism" and absence of ideological divisions. Anti-Communism, Caute's book confirms, itself constituted a powerful and aggressive ideology in the postwar years. Moreover, the lack of a longstanding commitment to civil liberties by all sides—a lack that existed despite our freedom-loving self-image and the Bill of Rights—contributed to the emergence of McCarthyism in the United States rather than in Great Britain. Second, by establishing the total absence of any serious internal security threat at the time, Caute suggests that "the great fear" can best be understood as the consequence of a quest to establish, in Henry Luce's phrase, "the American Century" abroad and to discredit the more left-liberal strands of the New Deal at home.

The result is a provocative study which challenges current convictions that Nixon's abuses of power resulted from his personality quirks or political objectives, that violations of civil liberties in the United States are confined to exceptional times, and that the American political system contains adequate safeguards against widespread abuses of power. Rather, as *The Great Fear* documents, respect for the civil liberties of radicals commands minimal support within the American body politic. Furthermore, when they were most needed, there were no significant elements within the political elite—whether in the executive, the legislative, or, particularly, the judicial branch—that were willing to act in a principled manner.

Caute's study also raises hard questions about the principles and priorities of both American conservatives and liberals during the Cold War years. Conservatives enthusiastically plunged into anti-Communist politics, and were willing, for reasons of "national security," to countenance and even promote far-reaching restrictions on individual liberties and a vast expansion of state power. If liberals were slightly more libertarian than conservatives, it was only in the most relative of senses. Cold War liberals compromised their stated ideals, rationalizing their support for far-reaching restrictions on individual liberties as necessary either to combat the "Communist threat" or to forestall more extreme McCarthyite measures. The liberals' missionary zeal to attain "the American Century" also provided a positive basis for their own McCarthyism.

Thus, Caute's impressive synthesis is to be welcomed as a useful corrective to the conventional wisdom that Senator Joseph McCarthy *was* "McCarthyism." Nonetheless, this is a deficient, because limited, study. Caute is superficial in his treatment of the role of J. Edgar Hoover and the FBI in creating the climate of fear, and he wholly ignores the most important institutional legacy of the Truman-Eisenhower era: the radical expansion of the authority of the federal intelligence agencies and their evolution into a virtually autonomous branch of government. The failure to trace this dangerous development not only calls into question the reasonableness of focusing only on the postwar years, but undermines Caute's major conclusion: namely, that "the great fear" abated during the Eisenhower years because that conservative administration "deflated anxiety, bringing reassurance."

ACTUALLY, MCCARTHYISM did not abate even during the Kennedy administration, with its "joyous confirmation of the new liberalism," nor was the liberal establishment able to dispose of the John Birch–Goldwaterite challenge until, as Caute puts it, the Vietnam War and the rise of the militant New Left "completely changed the face of the political landscape." That there were fewer successful purges after 1960 in the universities, the media, or the federal bureaucracy owed less to any abatement of anti-Communism than to the success of the witch-hunters during the Truman-Eisenhower years and, very importantly, to the absence of any preceding popular-front experience: later radicals and dissidents were simply less vulnerable to the McCarthyites' crude Red-baiting because they had no past Communist or Communist-front taint.

The 1960s and 1970s did represent an advance in certain ways, however. The influence of the House Un-American Activities Committee declined, the blacklist was abandoned, and there were few horror stories to compare with those Caute recounts from the earlier years. But not only did the "suitability" standards of Eisenhower's security program continue after 1960 to exclude nonconformists from federal employment and to legitimize a politics of Red-baiting, but, more important, the ubiquity of the McCarthyite crusade had transformed American institutions and dominant values.

This transformation constituted the Truman-Eisenhower administrations' most enduring legacy, a legacy which, if not absolutely guaranteeing the occurrence of the abuses of power now conveniently capsulized as the Watergate affair, surely paved the way for them. The Truman and Eisenhower presidencies were formative; during this period the power of federal intelligence agencies expanded radically.

The more significant and cumulative changes dating from those years include the radical expansion of FBI electronic surveillance authority; the FBI, CIA, and National Security Agency involvement in domestic political surveillance and their growing power to define the limits of their own investigative authority, at times even wholly independent of presidential knowledge or direction; and the whole atmosphere of lawlessness which shaped federal investigative policy. Reading Caute, one would have no sense that the FBI began a formal media program in 1946 to influence public opinion against radical and dissident movements, a program that was refined in 1956 with the initiation of a "Cointelpro—Communist Party" operation. This later program (intended to "harass, discredit and disrupt" targeted dissident organizations) was extended during the 1960s to other groups, while, at the same time, more informal "cointelpros" were directed at individuals—such as Martin Luther King,

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Jr. Other illegal activities engaged in by the federal intelligence agencies included a mail interception program started by the CIA in the 1950s, an illegal emergency detention program developed jointly by the FBI and Attorney General Tom Clark in the 1940s, and an illegal international telegraphic interception program initiated by the NSA, also in the 1940s.

TO PRECLUDE KNOWLEDGE of their involvement in illegal activities, intelligence bureaucrats devised elaborate filekeeping procedures for destroying documents that had the potential for adverse political consequences if discovered. Moreover, many of these programs were instituted without presidential authorization or even knowledge.

There are thus two parts of the process which Caute does not explore: (1) intelligence agencies were increasingly insulated from legislative or media oversight through the expansion of presidential powers and their own secretive conduct based on claims of "national security" and "executive privilege"; and (2) because intelligence officials were insulated from external controls, they were able to operate independently even of executive controls, and there finally emerged a quasi-independent, lawless intelligence community.

Nor were these changes confined to the domestic scene. Exploiting the same anti-Communist fears and the Cold War obsession with secrecy, Presidents and intelligence bureaucrats expanded their authority in foreign affairs during the Truman-Eisenhower years in obvious or probable violation of legislative or constitutional restrictions. One consequence of this was that, by the end of the 1950s, the executive branch had assumed a monopoly over the making of foreign policy.

Rather than being a distinctive and self-contained period, then, the Truman-Eisenhower years were actually the prelude to the abuses of power and the breakdown of responsible, constitutional government that have only recently come to light. Caute's contribution, accordingly, lies in extending our knowledge of the scope of the McCarthyite problem. His cursory, impressionistic conclusions and his failure to explore the evolution of federal intelligence policy detract from a book otherwise filled with insights and with lessons for our time. ❑

THOMAS HARDY'S LATER YEARS, by Robert Gittings. Atlantic-Little, Brown, 244 pp., $12.50

The elusive Hardy

WILLIAM H. PRITCHARD

"SOME PEOPLE SAY HE WAS a bit queer in the head," an inhabitant of Thomas Hardy's home town once remarked, "but I think he was just strange like the stories he wrote." Robert Gittings quotes this admirable bit of insight in his splendid concluding volume to the novelist-poet's biography. (*Young Thomas Hardy* was published in 1975.) Gittings is concerned with showing, as he had begun to in the earlier book, how Hardy's attempt to deny or improve upon his rural upbringing, and his immurement in what became a very unsatisfactory marriage to Emma Lavinia Gifford, inflicted damage "on an abnormally sensitive and secretive personality." This damage is visible particularly with regard to his "double life": his fascination, which he attempted to conceal, with a series of women, mostly literary ones, and especially with the woman who eventually became his second wife, Florence Dugdale. Yet for all the biographer's resourcefulness, able conjecture, tact, and taste in attributing sentiments to Hardy or Emma or Florence, one's feeling on concluding the book is something other than that of having had the puzzles solved and revelation provided. And for that, Gittings is rather to be praised than faulted.

Mainly because of his work on Keats, Gittings is often referred to as a "literary detective," the phrase hinting at uncertainty about whether we should salute such an activity. At moments in this book, his sleuthing feels a bit questionable (too much like *sleuthing*), or possibly trivial.

But this is not typically the case. For all Gittings's energy in suggesting the original in life of some Hardy fictional character, or in trying to identify the various ghosts from the poem "Wessex Heights," his book's major activity is to tell the story of Hardy's last 50 years with a sympathetic, critical, occasionally ironic eye. Gittings moves us through the storm over *Tess of the D'Urbervilles* and its gradual subsidence, to the publication of *Jude the Obscure* in 1895, at a moment when its author thought his career in rather admirable shape. Immediately, the outcries began against "Jude the Obscene," a novel filled with "dirt, drivel, and damnation." An American lady wrote an essay entitled "Hardy the Degenerate," while Edmund Gosse (who comes off poorly in this book) termed it "a grimy story" and told Hardy to his face (at the Savile Club, no less) that it was the most "indecent" novel ever written. Most seriously, *Jude*'s publication exacerbated the conflict with Emma, who, for the first time, had not assisted Hardy in the composition of a novel, and who detested what she understood to be its message (she coined the term "Jude-ite" to label the sort of intellectual woman who would admire the book).

Thus, the turn back to poetry in the 1890s—and Gittings emphasizes in particular the liberating effect of writing "Wessex Heights"—coincided with the turn further away from his wife. Emma had already, in 1891, begun the diary which may or may not have been titled "What I Think of My Husband"—we shall never know, since, upon reading it after her death, Hardy committed it to the flames. In 1899 she told a woman who had asked her for marital advice that at age 50 a married man gets restless: "Eastern ideas of matrimony secretly pervade his thoughts & he wearies of the most perfect & suitable wife chosen in his earlier life." The sentence is a touching one, but also comic in its attempt at serene, worldly wisdom. At any rate, whatever "Eastern ideas" came and went in his head, Hardy in 1907 (age 67) met Florence Emily Dugdale, a young Dorset-born girl who was to be his love, and his mate after Emma's death in 1912.

To readers who find Hardy's art at its most significant in the "Poems of 1912–1913" sequence, their precipitation by Emma's death will be the single most interesting event of this biography. Emma had been suffering, visibly so, from impacted gallstones, and Gittings's conclusion is that her

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husband managed to shut his eyes to her condition, then convinced himself—or at least tried to convince others—that her death came as an utter surprise that left him desolated. The last stanza of "The Going," which Gittings interestingly thinks the best of the "Poems of 1912–1913" (it was the first written) ends poignantly:

. . . O you could not know
That such swift fleeing
No soul foreseeing—
Not even I—would undo me so!

This "Not even I," considered in light of the circumstances traced in *Thomas Hardy's Later Years*, becomes more problematical in its exact weight. And I see no reason not to use this occasion to affirm, no matter how difficult and uneasy an affirmation it is, Eliot's separation between the man who suffers and the mind that creates, between the life and the poem. Otherwise, if we find Gittings convincing, as I do, we shall approach poems like "The Going" with a kind of knowing and superior sneer, surely a ruinous attitude in which to read the lyric, though one made available by the resources of biography.

with some earlier, more complacent "satires"; thus Hardy worried about the appropriateness of the title. But it was righter than he knew; in a profoundly serious way, the elegiac "Poems of 1912–1913" are also very importantly satires of circumstance.

Gittings does relatively little criticism in the book, yet its absence seems to me less damaging than in some other biographies—after all, with not only a packet of novels but also 900-odd poems to consider, one can hardly expect the author to perform the critic's task in addition to the biographer's. But he reveals a sharp eye for picking out poems usually left out of the anthologies; especially welcome is the discerning praise of the late, relatively unknown "Nobody Comes" ("Treeleaves labour up and down") and "An Untimely May," which Hardy wrote practically on his deathbed. There are also, to relieve the somber tones, some nicely humorous sketches of life at Max Gate as Hardy moved into extreme old age.

Reviewing this book in England, John Bayley has observed that Hardy tends to disappear under Gittings's exhaustive attention to those who surrounded him. In some ways nothing could have pleased him more, despite the embarrassment these revelations would have caused him. For Hardy is, above all, the poet one characterizes by negatives, his style not this and not that either, who made his finest poems out of broken appointments ("You did not come") or the inability to know what a thrush knows ("And I was unawares") or the odd thrill which comes (in "On the Departure Platform") from the realization that never again will the woman look as she looks now. "Ah, no; the years, the years" sings the refrain of "During Wind and Rain," with its canceling epitaph to the positive life that has transpired in each of its verses. This central impulse or coloring to Hardy's temperament cannot be explained away or "understood" even by analysis and speculation as sensitive as Gittings's, as responsibly devoted to studying the social and sexual roots and branches of a life. "He was just strange like the stories he wrote"—just strange like great artists turn out to be. ❏

An outcry began against "Jude the Obscene." At the Savile Club, Hardy was told to his face that it was the most indecent novel ever written.

BUT THE CROWNING IRONY, finely brought out by Gittings, is that Florence Dugdale, staying at Max Gate and as yet unmarried to Hardy, was deeply distressed by the flood of poems about Emma which her husband had produced. It is almost certain, and the final twist of the knife, that the guilt and remorse which so spurred Hardy's creative, elegiac energies were very much a consequence of the attention he had paid Florence during the last five years, at the cost of ignoring—up until her death—his own wife. The volume of his poetry that was published in 1914 was called *Satires of Circumstance* and contained, in addition to the 1912–1913 sequence, such excellent poems as "Channel Firing" and "Convergence of the Twain," along

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The light tradition

X. J. KENNEDY

WHAT EVER HAPPENED TO light verse? A mere couple of decades ago, it seemed a plentiful staple in our literary diet. Once, readers of *The New Yorker* feasted continually on the artful atrocities of Ogden Nash, while in less ritzy neighborhoods the readers of *Collier's* and the old *Saturday Evening Post* tossed down the frothy jingles of Richard Armour each week. (Armour's specialty, as the long-memoried may recall, was the rhymed complaint about the petty annoyance: rain on a freshly washed car, the lack of decent tomatoes in December. However vile most of the themes he set for himself, Armour wrote with a Miltonically steady hand.) Today it is hard to think of a single noteworthy American magazine for adults that regularly prints any light verse whatsoever.

Seeking possible reasons for this decline, I found myself quickly becoming serious. In times past, a crowd-pleaser like Armour could thrive in a nation of magazine-buyers literate enough to know a witty couplet when they saw one. Such an audience must be wasting away rapidly. I don't know whether things are equally bad all over, but lately I was saddened to hear of an unexpected problem experienced by students at a community college

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near Boston who aspire to be children's librarians. For the life of them, they can't pick up allusions to traditional nursery rhymes. Old King Cole and the cow that jumped the moon mean nothing to them. Evidently, when they were children, nobody held them and read them Mother Goose. Though nowadays they can read (very self-consciously), they can't get a thing out of their reading except plain prose sense. Grimly, they enroll in extra courses in "reading dynamics," or speed reading, striving for the ability to grab a writer's gist more efficiently, and thereby to shorten the torments of reading. When you ponder such a phenomenon, then the decline of light verse in America seems a thing of no more consequence than the demise of a canary in the collapse of an apartment building.

In England today—take this from Kingsley Amis—the future of light verse appears bleak. Amis's pessimism worries me, for who but the English can we trust to sustain valuable crafts that have practically died out in America (not only light verse, but custom tailoring and poetry reviewing)? But even in England now, light versifiers, their art confined to limericks, topical verse about politics, and "exercises in the styles of the dead," can hope for little reward—at best, a couple of quid from a *New Statesman* weekly competition.

Amis's anthology reaches back to a glorious tradition, beginning with a Shakespearean sea chanty. It is not an exclusively English tradition, for Amis admits an oddly assorted handful of Americans: Ben Franklin, Oliver Wendell Holmes, Peter De Vries, Robert Frost, Anthony Hecht, Phyllis McGinley, and Bret Harte (with his mediocre ballads of "Truthful James" and the "heathen Chinee"). Where, the perplexed American light-verse lover has to ask, is anything by Nash, Dorothy Parker, E. B. White, Morris Bishop, Samuel Hoffenstein, or John Updike? What of those American poets who have scribbled a good deal of fine light verse left-handedly—E. E. Cummings, Ezra Pound, Theodore Roethke, Howard Moss, Richard Wilbur? As for the English offerings, several of them—such as Alan Bennett's nostalgic lines on the trade names of water-closet fixtures—seem as unexportable as Liverpool smog. But others of Amis's most delectable choices, while belonging to the extremely British "Coffee-cups cool on the Vicar's harmonium" school, readily survive an Atlantic crossing.

ANTHOLOGISTS, OF COURSE, have a right to their biases, and Amis plainly states his own colossal ones. He includes no epigrams, no unintentionally comic bad verse, nothing that will "raise an ill-natured smile" (hence, nothing by Alexander Pope). Byron is included, but neither Dryden nor Burns. The great English tradition, as presented here, almost appears to be a zoo with not enough elephants.

For all the rigor of his exclusions, some of Amis's principles of selection admit so many different genres of light verse that most of them receive merely skeletal representation. (He says he first made the selection, then tried to figure out the principles.) In a book that attempts to display a great tradition adequately, it hardly seems reasonable to make room for limericks, nonsense verse, and parody—each a vast area of literature in its own right. Still, it would be churlish to resent the inclusion of Victor Gray's limerick—

While visiting Arundel Castle
I sent my sick uncle a parcel.
The contents of it
Were the local grey grit
To rub on his sore metatarsal.

—or J. B. Morton's lovely nonsensical "Dancing Cabman," or Hugh Kingsmill's faultless parody of A. E. Housman that begins, "What, still alive at twenty-two, / A clean upstanding chap like you?" Or Anthony Brode's mock piece of advertising copy for a breakfast cereal, as Gerard Manley Hopkins might have written it, praising "All things, crisp, crunchy, malted, tangy, sugared and shredded."

At least Amis, in his attempt to define light verse, has done better than his predecessor W. H. Auden, whose *Oxford Book of Light Verse* (1938) tried to take in folk ballads and all other song lyrics. At the time he compiled the old Oxford book, Auden had not yet lost faith in a Marxist utopia. He predicted that, along with the eventual death of social inequity, a golden age of light verse would arrive—an unlikely chain of events it now seems, especially if we recall that light verse, from the time of Charles II to the heyday of the wits of the Algonquin, has tended to flower from establishments. Amis declares that he'd be perfectly happy to have his own anthology thought reactionary. Well aware of the perils of trying to define light verse, he sets down a few laws, but admits that they have many exceptions. Unlike poetry, light verse must be technically flawless in its rhymes and in its scansion; and unlike poetry, it deals with "low matters . . . poetically or morally unsuitable for high consideration," expressed in "low terms," even terms that are "vulgar, ill-bred, obscene." Presumably this law leads Amis to include his own verses on low-life in Wales, including his famous quatrain:

Hearing how tourists, dazed with reverence,
Look through sunglasses at the Parthenon,
Dai thought of that cold night outside the Gents
When he touched Dilys up with his gloves on.

But if Amis had taken that law seriously, he might have included some truly offensive stuff—say, the anonymous "Ballad of Eskimo Nell" ("Where the skeletons rattle in sexual battle, and the mouldering corpses screw").

It is Amis's law that is at fault. Poems can be written about any matters, whether "high" or "low," and there is no language that a poet cannot make a poem out of—as moderns from Thomas Hardy to Allen Ginsberg have demonstrated. Nor is light verse to be distinguished from poetry by its tone—"light in the sense of cheerful, airy." Amis disproves that latter law by including a few pieces of sour misanthropy, such as "Wishes of an Elderly Man" by Walter Raleigh (1861–1922):

I wish I loved the Human Race;
I wish I loved its silly face;
I wish I liked the way it walks;
I wish I liked the way it talks;
And when I'm introduced to one
I wish I thought What Jolly Fun.

No, what separates light verse from poetry is something else—a certain degree of emotional intensity. For while poetry generally speaks with the deep voice of feeling, light verse tends to twitter and chirp. Even a poem in which feelings are mingled—Eliot's "Prufrock," for example—inhabits another altitude, for it touches us and it moves us profoundly. But light verse is a game of little consequence, and if in its midst a strong emotion should intrude, then its game is spoiled, like a Maypole dance disrupted by an outbreak of concupiscence among the dancers. As in

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the elderly man's damnation of the entire human race, a piece of light verse may profess strong feelings. Yet all the while it is affirming them, its jingly form and its verbal playfulness set up an ironic betrayal of that affirmation.

WHEN HIS SURVEY OF THE great tradition arrives at the present moment, Amis finds himself in an awful quandary. Now that most good poets have junked all rhyme and meter, those essentials of traditional light-verse, how is any self-respecting reactionary anthology to appear contemporary?

In addressing this problem, Amis comes up with one brilliant insight: that light verse is bookish stuff, intrinsically dependent upon heavy poetry. And so, when poetry (Amis calls it *high verse*) abandons form, "a mortal blow is dealt to light verse, in which form has always been of the essence." (By "form," I take it, Amis means rhyme and meter.) That strikes me as one of the more perceptive critical observations I have met in the last 20 years. Still, poetry (or so contemporary poets would claim) hasn't abandoned *all* form but, rather, has jimmied form open. Feeling obliged to represent the rhymeless and unmetered present moment, Amis includes some free-form stuff by George MacBeth and Charles Tomlinson, and waffles a little bit in his introduction, excusing them as "happy freaks." Here's MacBeth's contemporary revision of *Macbeth:*

> *Drums. Trumpets. Marching trees*
> *and the old woman with her bad scene*
> *about all the perfumes of Arabia*
> *not being a spot-lifter*

Far from being a freak, that sort of blithe travesty is as common as dirt in just about any little magazine of poetry you'd care to pick up these days. It isn't light verse in the sense we have known it—the light verse of P. G. Wodehouse, Hilaire Belloc, or John Betjeman (who are, by the way, excellently represented in this book), all of them deft rimesters and meter-bouncers. Evidently, it is another art; and probably if light verse is to continue, light verse will need a new definition. Say that poetry in our time has a perfect right to remake itself—as who but the most arch of reactionaries wouldn't?—and you might as well grant the same right to light verse, poetry's sidekick, its harmless parasite.

F I L M

HEAVEN CAN WAIT, directed by Warren Beatty and Buck Henry. GIRLFRIENDS, directed by Claudia Weill.

Touchdown on cloud 9

STEPHEN HARVEY

AS ANY STUDENT OF MOVIE economics knows, in filmmaking art and prosperity rarely coincide. It's just when its coffers are filled to overflowing that Hollywood tends to be most cautious. The last two years have brought boom times to the movies, and those at the helm have nurtured their investments with a spate of sequels, homages, lampoons, and various other derivations of favorites from both the recent and distant past.

The decadent state of film comedy is probably the most dispiriting example of this trend—lately it seems that if Mel Brooks, Gene Wilder, Marty Feldman, and Neil Simon didn't have old movies to prompt them, their comic inspiration would dry up like a prune left out too long in the California sun. Fortunately, the law of averages practically insures that sooner or later something will come along to justify this retrospective mania—in the realm of sci-fi, *Close Encounters of the Third Kind,* an embellishment of the 1951 movie, *The Day the Earth Stood Still,* managed it with a flourish. Now, Warren Beatty's *Heaven Can Wait* has triumphantly shown that an archaic romantic fantasy can be resuscitated with its charm and humor intact. The result is the most entertaining movie Hollywood has turned out thus far this year—a small enough compliment, to be sure, but an achievement to be treasured nonetheless after the last grim six months.

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Although its title has been lifted from a wonderful movie by Ernst Lubitsch, *Heaven Can Wait* is actually a reworking of the 1941 *Here Comes Mr. Jordan.* There, Robert Montgomery played a boxer called to his maker before his appointed hour, causing heavenly messenger Claude Rains to scurry about in quest of some appropriate body to house Montgomery's spirit for the remaining time allotted him on this mortal plane. Although the basic plot and principal characters have survived more or less unscathed, certain details have been gracefully refurbished; the hapless hero is now a football pro revived in the guise of a conscienceless industrialist, discovering love in the person of an impassioned English environmentalist (Julie Christie).

This is the third film Beatty has produced; each time he's shown an eerie instinct for anticipating the mass tastes of the moment.

It's been decades since guardian angels were nearly as common a movie staple as cowboys and G-men. Yet the most remarkable thing about this movie is that it doesn't feel dated or, in fact, like a remake at all—while the musty air of an archeological dig usually clings to such efforts, everything about *Heaven Can Wait* seems freshly minted. Much of the credit must clearly be granted to Beatty, who produced, co-wrote, and co-directed the film as well as tackled the leading role. This is the third film he has produced, preceded by *Bonnie and Clyde* and *Shampoo;* each time he's had an eerie instinct for anticipating the mass movie tastes of the moment, distilling first the anarchy of the late sixties, then the

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hedonistic anomie of the early seventies, and now a longing for coherence and the kind of sentiment which would have been dismissed out of hand as corny and puerile just a few years ago. But even more important than his prescience is the surpassing skill for delivering the goods as promised. There's nothing facile or manipulative about the fey romanticism of *Heaven Can Wait;* Beatty eases the audience so matter-of-factly into the mood of the story that you've succumbed to its spirit before there's been time to react to the coyness of its central conceit.

ups even amidst the dry-ice billows of a sound-stage heaven. Although Beatty would seem one of the last actors one would think of to impersonate wide-eyed innocence, it's the unforced nonchalance of Beatty the performer that makes something at once virile and vulnerable of this part.

As Burt Reynolds demonstrated recently with *The End,* a danger actors can face in directing their own vehicles is the tendency to concentrate so relentlessly on polishing their own personae that they turn the rest of the cast into flailing supernumeraries. Although there's never a doubt as to who is the propelling force behind *Heaven Can Wait,* Beatty scrupulously avoids tipping the scales unfairly in his own direction. While the part barely skims her capabilities, Julie Christie could scarcely be bettered. In one close-up at the film's conclusion, the luminous intensity she projects is well-nigh overpowering—in a matter of seconds she gives a succinct lesson in the spare directness that constitutes the best kind of screen acting. Jack Warden is the quintessential *mensch* as Joe's stalwart trainer, and if James Mason fails to erase the memory of Claude Rains as the original celestial guide, he gives it a creditable try all the same. (I'd have given a lot to see what Cary Grant, Beatty's original choice, might have done with the part.)

DAN HUBIG

TO A LARGE EXTENT THE movie works because Beatty's screen personality is so sensible and earthbound—by implication, if *he* can believe this yarn, anyone can. In the past Beatty has excelled at playing characters whose narcissism blinds them to life's realities until hubris hits with a vengeance in the final reels. Here Joe Pendleton, the jock with ideals, is oblivious to his own appeal, and since he's invisible to all the humans on screen, Beatty's magnetism is a secret kept between filmmaker and audience. He's an overgrown cub scout who pays gallant court to women, tootles a quavery rendition of "Ciribiribin" on his trusty sax, and keeps in shape with a daily regimen of push-

While Beatty, Christie, and Warden monopolize the film's wistful moments, Dyan Cannon purloins most of the laughs, with a firm assist by Charles Grodin as her button-down lover. As the adulterous minx trying to polish off Beatty in his multinational-mogul incarnation, Cannon finally has another chance to show off that flair for nouveau-riche heebie-jeebies which she first demonstrated in *Bob & Carol & Ted & Alice.* Her scenes with Grodin are the most sharply written in the film, flavored with that rattled, tight-lipped hysteria which once marked Nichols and May at their most uproarious—no surprise, since Elaine May collaborated with Beatty on the script.

There's no denying that pleasurable as it is, *Heaven Can Wait* isn't quite the unalloyed bliss it might have been. Beatty and co-director Buck Henry haven't completely managed to streamline all the arbitrary plot machinery contained in the original story, and, as neither had ever directed a feature before, the film has its quota of technically clumsy moments. Their handling of homicide detective Vincent Gardenia's farcical probe of Beatty's second demise fails entirely, and I wish someone had resisted the inclusion of that inevitable wordless stroll of hero and heroine through soft-focus trees and flowers while a thousand strings dribble over the soundtrack.

It would be easy and perhaps justified to note that, compared to *Bonnie and Clyde* and *Shampoo, Heaven Can Wait* is pretty tame and cozy stuff, and I can't help wondering if something isn't gravely awry when a trifle such as this is the best the movies have to offer these days. Still, a film this buoyant happens along too rarely to afford anyone the luxury of carping. Above all it's nice to know that when the right talents are put to the task, Hollywood can still manage, just as in the old days, to fashion a satisfying fairy tale for romance-hungry adults.

EVER SINCE THE MOVIES' silent beginnings, a handful of women have occasionally infiltrated the closed male fraternity of filmmakers. But only recently, in America at least, have a significant number of female directors broken this masculine monopoly. Last year Joan Silver turned out her second feature,

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the engaging newspaper comedy *Between the Lines*, while TV director Joan Darling made her film debut with *First Love;* at this writing, Joan Tewkesbury (who scripted *Nashville*) is at work on a project entitled *Old Boyfriends*, while comedy writer Jane Wagner is shooting a vehicle for Lily Tomlin and John Travolta entitled *Moment to Moment*. If this encouraging phase continues, it won't be long before the signing of a woman director for a major feature won't be newsworthy at all.

Since that day has yet to arrive, it still merits notice when an unprepossessing film like *Girlfriends* manages to elude the limbo which awaits most shoestring independent features, garnering considerable attention at this year's Cannes Film Festival, plus a distribution deal and a directorial contract with Warner Brothers for its young director, Claudia Weill. As with so much else in the movie business, timing—in the face of the unexpected popular success of *An Unmarried Woman*—probably had a lot to do with this, because although *Girlfriends* has been in the works for over two years, it's basically a rough-hewn variation on the same theme.

Like the Mazursky film, this is a bittersweet yet upbeat tale of a woman learning to cope all on her lonesome in soulless Manhattan. Yet while Jill Clayburgh's Erica had so much going for her she made even Bess Myerson look insecure, Susan Weinblatt (played by Melanie Mayron) is more than prosaic enough to give heart to all the underachieving schleps in the audience. Endowed with the proportions of a matzo ball and an incurable case of the Jewish frizzies, Susan waddles through a nicotine haze of unpaid Con Ed bills, a haphazard love life, and the professional stalemate which usually greets twenty-odd-year-old artists with lofty aspirations and slender portfolios. (She's a photographer, you see; we still haven't reached the stage where you can be a movie feminist without embracing some artsy-craftsy lifestyle or other.) Susan's hurdles are recognizably human, and her victories likewise are persuasively modest—that first exhibit in a small Soho gallery, and a tentative rapport with a winning if undernourished and somewhat kvetchy young man.

Weill clearly understands that smallness can be a virtue in itself, and by focusing on the particulars of this one character rather than underscoring the cosmic significance of it all, *Girlfriends* comes off as a consistently pleasant, occasionally affecting little film. Its structure is somewhat unusual and quite appropriate to the subject—a chronological string of terse vignettes, like snapshots out of the heroine's life—and Vicki Polon's screenplay contains a number of genuinely acute passages, particularly when it concentrates on the intertwined affection and resentment which bind Susan and her ex-roommate turned prototypical mad housewife.

I was less taken with this film's willfully slapdash visual style; budgetary restrictions no doubt played a part, but I'd wager that it has more to do with the naive credo of many ex-documentarists that pseudoimpromptu camera angles and lots of grain in the photography are an artistic shortcut to Truth. Not all of the performances bear much relation to life—or to art either, for that matter. Best friend Anita Skinner is rather more wan than was absolutely necessary, while gallery owner Viveca Lindfors as usual overloads a tiny part with big nuances. Yet Melanie Mayron thoroughly carries off the essential trick of turning the ordinariness of the central character into something special and memorable. This part could easily have plummeted into grotesquery, but she teeters between bilious self-nausea and beaming pride with astonishing balance and conviction.

On the basis of this promising debut, Claudia Weill should prove a welcome addition to the ranks of Hollywood directors. As with Joan Silver, her insight and subtlety are qualities that many of her more established colleagues would do well to emulate. ❑

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LETTERS

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The power to make war

DURING THE COURSE OF Barton J. Bernstein's review of *The Korean War* [*INQUIRY,* May 15, 1978], he made the statement that Truman did not bother to ask for a declaration of war from Congress, "thus setting a dangerous precedent." The President of the United States has called out the troops approximately 200 times during our 200-year history as a Republic; and in the course of those actions, he has asked Congress for a declaration of war only five times, and two of those were in the same war.

The President is the only person in our government who can call out the troops or, in other words, send our men to war. The Congress can declare war every half hour, but that does not have the power of engagement. This is a popularly held misconception, but it in no way interferes with Mr. Bernstein's good review of this book.

BARRY GOLDWATER
United States Senate
Washington, D.C.

BARTON J. BERNSTEIN replies: Senator Goldwater's letter dramatically expresses how far some conservatives have moved toward disregarding the Constitution and expanding executive authority, at the cost of practically eliminating certain powers of Congress, namely, its power to declare war. Contrast Senator Goldwater's letter with the analysis presented by Senator Robert Taft, Sr., "Mr. Republican," on June 28, 1950, when he objected on constitutional grounds to President Truman's commitment of American forces to combat in Korea. "There is no legal authority for what he has done," Taft asserted. "If the President can intervene in Korea without congressional approval, he can go to war in Malaya or Indonesia or Iran or South America. Presidents have at times intervened with American forces to protect American lives or interests, but I do not think it has been claimed that . . . the President has any right to precipitate open warfare."

An analysis of the Department of State's defense against Taft's argument ("Authority of the President to Repel the Attack in Korea") indicates that most of the 85 cases cited therein are easily distinguished from the Korean War, either because they involved committing U.S. troops "to protect specific American lives and property," or because they involved very small numbers of troops, and usually for a brief time.

Since Truman's commitment of troops in Korea, the pattern has developed that Presidents enter wars without explicit congressional approval. The sustained war in Indochina, conducted under four Chief Executives, is the most painful example. Unfortunately, Senator Goldwater seems to believe that the President, alone, should have that power. Doesn't that render the "declaration of war" clause superfluous?

Specious debunking

COULD YOU LOOK FOR A SCI- ence writer who will at least use a little common sense before repeating "scientists' findings" that claims "may have been grossly exaggerated."

I am talking about David Ritchie's examination of Ocean Thermal Energy Conversion projects [*INQUIRY,* June 26, 1978], which ends up on a note of triumphant debunking after bringing up five purported drawbacks, all of which seem obviously specious.

"Can our technology handle the job of floating something the size of the Empire State Building?" Ritchie asks, apparently rhetorically, apparently without realizing that when oil, instead of renewable thermal energy, is under consideration, industry thinks nothing of floating such artifacts as the supertanker *Batilus,* 1312 feet long. Can such "giant structures be moored securely to the ocean floor?" Yes, when they are oil drilling platforms, as one is this very moment in the Santa Barbara channel.

"They will be horribly inefficient," says Ritchie, and there follows a comparison with coal-fired plants. But thermal power, like wind, is based on a naturally occurring, basically inexhaustible resource: the theoretical efficiency is beside the point, since you aren't wasting what you don't use.

Then we have talk of corrosion and barnacles, exactly as if there have not been 100 years of experience with metal structures in marine environments. Follows the capper: ". . . no one wants to buy OTEC plants," as if there should be surprise that one of the most conservative industries in the United States feels some trepidation before committing itself, sight unseen, to a new technology.

E. MANKIN
Venice, Calif.

DAVID RITCHIE replies: An oil drilling platform, held above the surface on metal legs, is not the same thing as a massive structure 99 percent submerged in the ocean. Anchoring the two assemblies presents two completely different sets of problems. Nor are the forces acting on an OTEC plant the same as those acting on a supertanker. Imagine setting the tanker on end, with only the tip of its bow sticking above the waves, and you will have an idea of what an OTEC plant will be like.

As for the efficiency of OTEC plants: even among "naturally occurring, basically inexhaustible" energy sources, there are more efficient generators than OTEC plants. Windmills go OTEC several times better.

We are able to keep barnacles and slime off marine structures, but only those structures which can put into drydock regularly for scraping and repainting. How can one put an OTEC plant, with its colossal intake pipe, into drydock for the necessary maintenance? And how could one coat the heat exchangers with barnacle repellents without interfering with heat exchange?

Certainly no one can blame utilities for refusing to buy OTEC plants "sight unseen." One can, however, blame the federal government for sinking so much money in OTEC when its drawbacks are becoming so plain.

A classic error

MR. HENTOFF MADE A CLAS- sic error in his "First Amendment Watch," [*INQUIRY,* May 15, 1978]. It's so tempting to attribute all great freedom of speech quotes to William O. Douglas. In fact, the words with which the article is concluded are those of Justice Robert Jackson, concurring in *Thomas* v. *Collins,* 323 U.S. 516, 545 (1945).

ROBERT VARDE KRENZEL
Chicago, Ill.

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